

**LOCAL
GOVERNMENT LAW
AND
ADMINISTRATION**

VOLUME II

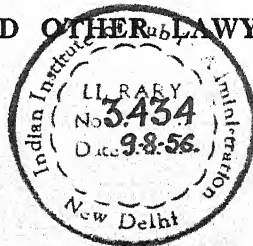
LOCAL GOVERNMENT LAW AND ADMINISTRATION IN ENGLAND AND WALES

By

THE RIGHT HONOURABLE THE
LORD MACMILLAN

A LORD OF APPEAL IN ORDINARY

AND OTHER ^{Sub}LAWYERS



VOLUME II

BANKERS' AND OTHER OVERDRAFTS

to

CENSUS

COMPUTERISED

LONDON

BUTTERWORTH & CO. (PUBLISHERS), LTD.

BELL YARD, TEMPLE BAR

AUSTRALIA :	BUTTERWORTH & CO. (AUSTRALIA), LTD., SYDNEY AND MELBOURNE
CANADA :	BUTTERWORTH & CO. (CANADA), LTD., TORONTO
INDIA :	BUTTERWORTH & CO. (INDIA), LTD., CALCUTTA, MADRAS AND BOMBAY
NEW ZEALAND :	BUTTERWORTH & CO. (AUSTRALIA), LTD., WELLINGTON AND AUCKLAND

Printed in Great Britain

BY

WILLIAM CLOWES & SONS, LIMITED
LONDON AND BECCLES

Editor in Chief.

THE RIGHT HONOURABLE THE
LORD MACMILLAN,
A LORD OF APPEAL IN ORDINARY.

Managing Editors:

ERSKINE SIMES, Esq., M.A.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW;
JOINT EDITOR OF "LUMLEY'S PUBLIC HEALTH."

PAUL C. DAVIE, Esq., B.A.,

OF LINCOLN'S INN, BARRISTER-AT-LAW.

General Revising Editor:

H. J. COMYNS, Esq., C.B.E.,

OF GRAY'S INN, BARRISTER-AT-LAW.

Editorial Board:

SIR HARRY G. PRITCHARD,

SENIOR PARTNER, SHARPE, PRITCHARD & Co.,
SOLICITORS AND PARLIAMENTARY AGENTS;
SECRETARY TO THE ASSOCIATION OF MUNICIPAL
CORPORATIONS.

ERSKINE SIMES, Esq., M.A.,

OF THE INNER TEMPLE, BARRISTER-AT-LAW;
JOINT EDITOR OF "LUMLEY'S PUBLIC HEALTH."

W. L. PLATTS, Esq.,

SOLICITOR OF THE SUPREME COURT; CLERK OF THE
PEACE AND CLERK OF THE COUNTY COUNCIL
OF KENT.

GEORGE F. BUCHAN, Esq.,

M.D., F.R.C.P., D.P.H.,

MEDICAL OFFICER OF HEALTH FOR WILLESDEN;
PAST PRESIDENT OF THE SOCIETY OF MEDICAL
OFFICERS OF HEALTH.

Revising Editors:

For Local Government Subjects:

G. E. HART, Esq.,

SOLICITOR OF THE SUPREME COURT; A REVISING
EDITOR OF "HALSBRUY'S STATUTES OF ENGLAND."

For Subjects affecting Treasurers and Accountants:

R. A. WETHERALL, Esq.,
F.S.A.A., F.I.M.T.A.,

BOROUGH TREASURER, COUNTY BOROUGH OF
SWANSEA; PAST PRESIDENT OF THE INSTITUTE OF
MUNICIPAL TREASURERS AND ACCOUNTANTS.

For Subjects affecting Medical Officers of Health:

GEORGE F. BUCHAN, Esq.,
M.D., F.R.C.P., D.P.H.,

MEDICAL OFFICER OF HEALTH FOR WILLESDEN;
PAST PRESIDENT OF THE SOCIETY OF MEDICAL
OFFICERS OF HEALTH.

For London:

G. P. WARNER TERRY, Esq.,

BARRISTER-AT-LAW; ASSOC. CHARTERED
SURVEYORS' INST.; FORMERLY DEPUTY CLERK OF
THE METROPOLITAN WATER BOARD.

Publishing Editor.

J. W. WHITLOCK, Esq., M.A., LL.B.

The Titles in this Volume have been contributed by the following :—

TITLE	CONTRIBUTED BY
BANKERS' AND OTHER OVER-DRAFTS.	HENRY BROWN, Esq., F.S.A.A., Treasurer of the City of Rochester.
BARBED WIRE.	R. C. MAXWELL, Esq., O.B.E., B.A., LL.D., of the Middle Temple, Barrister-at-Law.
BATH CHAIRS.	R. C. MAXWELL, Esq., O.B.E., B.A., LL.D., of the Middle Temple, Barrister-at-Law.
BATHING.	A. M. OLIVER, Esq., O.B.E., M.A., Solicitor, Town Clerk of the City and County of Newcastle upon Tyne.
BATHS AND WASH- HOUSES.	A. M. OLIVER, Esq., O.B.E., M.A., Solicitor, Town Clerk of the City and County of Newcastle upon Tyne.
BEATING THE BOUNDS.	W. H. DUMSDAY, Esq., of Gray's Inn, Barrister-at-Law.
BEGGING.	W. H. DUMSDAY, Esq., of Gray's Inn, Barrister-at-Law.
BETTERMENT.	A. M. OLIVER, Esq., O.B.E., M.A., Solicitor, Town Clerk of the City and County of Newcastle upon Tyne.
BETTING.	W. H. DUMSDAY, Esq., of Gray's Inn, Barrister-at-Law.
BICYCLES.	R. C. MAXWELL, Esq., O.B.E., B.A., LL.D., of the Middle Temple, Barrister-at-Law.
BILL POSTING.	W. H. DUMSDAY, Esq., of Gray's Inn, Barrister-at-Law.
BILLIARDS.	R. C. MAXWELL, Esq., O.B.E., B.A., LL.D., of the Middle Temple, Barrister-at-Law.
BILLS, BORROWING BY.	ERNEST LONG, Esq., Deputy City Treasurer of the City and County Borough of Coventry.
BILLS, PARLIA- MENTARY AND PRIVATE.	EDGAR MACASSEY, Esq., of the Middle Temple, Barrister-at-Law.
BIRTH CONTROL.	JAMES FENTON, Esq., M.D., D.P.H., Medical Officer of Health for the Royal Borough of Kensington.
BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN.	C. E. BRIDGES, Esq., of Gray's Inn, Barrister-at-Law, an Assistant Secretary to the Middlesex Education Committee.
BLIND PERSONS.	T. B. WHEELER, Esq., M.A., Principal Assistant Secretary to the Middlesex Education Committee.
BOARD OF CONTROL.	L. G. BROCK, Esq., C.B., Chairman of the Lunacy Board of Control.

The Law is stated as at July 1st, 1934.

TITLE	CONTRIBUTED BY
BOARD OF EDUCATION.	C. E. BRIDGES, Esq., of Gray's Inn, Barrister-at-Law, an Assistant Secretary to the Middlesex Education Committee.
BOARD OF TRADE.	MISS E. BRIGHT ASHFORD, B.A., of the Middle Temple, Barrister-at-Law.
BONDS.	ERNEST LONG, Esq., Deputy City Treasurer of the City and County Borough of Coventry.
BOROUGH ACCOUNTS.	HENRY BROWN, Esq., F.S.A.A., Treasurer of the City of Rochester.
BOROUGH COUNCILLOR.	HARRY GEEN, Esq., of the Middle Temple, Barrister-at-Law.
BOROUGH ENGINEER AND SURVEYOR.	PROFESSOR R. G. H. CLEMENTS, M.C., M. Inst. C.E., Maybury Chair of Highway Engineering, University of London, and
BOROUGH POLICE.	MISS E. BRIGHT ASHFORD, B.A., of the Middle Temple, Barrister-at-Law.
BORROWING.	C. C. H. MORIARTY, Esq., O.B.E., LL.D., Assistant Chief Constable of Birmingham.
BREAD.	HENRY BROWN, Esq., F.S.A.A., Treasurer of the City of Rochester.
BREAKING UP ROADS.	R. A. ROBINSON, Esq., of the Middle Temple, Barrister-at-Law, Chief Officer Public Control Department, Middlesex County Council.
BRIDGES.	PROFESSOR R. G. H. CLEMENTS, M.C., M. Inst. C.E., Maybury Chair of Highway Engineering, University of London, and
BRIDGES OVER STREETS.	MISS E. BRIGHT ASHFORD, B.A., of the Middle Temple, Barrister-at-Law.
BRINE PUMPING.	PROFESSOR R. G. H. CLEMENTS, M.C., M. Inst. C.E., Maybury Chair of Highway Engineering, University of London, and
BUDGETARY CONTROL.	MISS E. BRIGHT ASHFORD, B.A., of the Middle Temple, Barrister-at-Law.
BUILDING.	PROFESSOR R. G. H. CLEMENTS, M.C., M. Inst. C.E., Maybury Chair of Highway Engineering, University of London, and
BUILDING AND IMPROVEMENT LINES.	MISS E. BRIGHT ASHFORD, B.A., of the Middle Temple, Barrister-at-Law.
BUILDING BYE-LAWS.	R. C. MAXWELL, Esq., O.B.E., B.A., LL.D., of the Middle Temple, Barrister-at-Law.
BURIAL AND CREMATION.	HENRY BROWN, Esq., F.S.A.A., Treasurer of the City of Rochester.
BURIAL AUTHORITIES.	W. E. WATSON, Esq., F.R.I.B.A., Associate (Late Fellow) of the Chartered Surveyors Institution, Member Town Planning Institute, etc., of Gray's Inn, Barrister-at-Law.
	W. E. WATSON, Esq., F.R.I.B.A., Associate (Late Fellow) of the Chartered Surveyors Institution, Member Town Planning Institute, etc., of Gray's Inn, Barrister-at-Law.
	W. E. WATSON, Esq., F.R.I.B.A., Associate (Late Fellow) of the Chartered Surveyors Institution, Member Town Planning Institute, etc., of Gray's Inn, Barrister-at-Law.
	N. P. GREIG, Esq., B.A., of the Inner Temple, Barrister-at-Law.
	N. P. GREIG, Esq., B.A., of the Inner Temple, Barrister-at-Law.

TITLE	CONTRIBUTED BY
BURIALS AND BURIAL GROUNDS.	N. P. GREIG, Esq., B.A., of the Inner Temple, Barrister-at-Law.
BUTTER, MARGARINE AND CHEESE.	R. A. ROBINSON, Esq., of the Middle Temple, Barrister-at-Law, Chief Officer Public Control Department, Middlesex County Council.
BYE-LAWS.	W. E. WATSON, Esq., F.R.I.B.A., Associate (Late Fellow) of the Chartered Surveyors Institution, Member Town Planning Institute, etc., of Gray's Inn, Barrister-at-Law.
BY-PASS ROADS.	PROFESSOR R. G. H. CLEMENTS, M.C., M. Inst. C.E., Maybury Chair of Highway Engineering, University of London, and
CABMEN'S SHELTERS.	MISS E. BRIGHT ASHFORD, B.A., of the Middle Temple, Barrister-at-Law.
CAMBRIDGE, BOROUGH OF.	R. C. MAXWELL, Esq., O.B.E., B.A., LL.D., of the Middle Temple, Barrister-at-Law.
CANAL BOATS.	ASHLEY TABRUM, Esq., O.B.E., LL.M., Solicitor, Clerk of the Peace, Clerk of the County Council of Cambridgeshire and County Returning Officer.
CANALS.	MISS E. BRIGHT ASHFORD, B.A., of the Middle Temple, Barrister-at-Law.
CANCER.	MISS E. BRIGHT ASHFORD, B.A., of the Middle Temple, Barrister-at-Law.
CAPITAL EXPENDITURE OUT OF INCOME.	R. VEITCH CLARK, Esq., M.A., B.Sc., M.B., Ch.B., D.P.H., Medical Officer of Health for the City, County and County Borough of Manchester.
CARBIDE OF CALCIUM.	HENRY BROWN, Esq., F.S.A.A., Treasurer of the City of Rochester.
CARE AND PROTECTION OF CHILDREN.	MISS E. BRIGHT ASHFORD, B.A., of the Middle Temple, Barrister-at-Law.
CASE PAPER SYSTEM.	A. C. L. MORRISON, Esq., Chief Clerk of the Metropolitan Juvenile Courts.
CASE STATED.	JOHN MOSS, Esq., of Gray's Inn, Barrister-at-Law, Public Assistance Officer for the County of Kent.
CASUAL VACANCY.	E. GILBERT WOODWARD, Esq., M.A., B.C.L., of the Middle Temple, Barrister-at-Law.
CASUALS.	ADAM PARTINGTON, Esq., Solicitor and Town Clerk of the Borough of Ilford.
CATCHMENT BOARDS.	JOHN MOSS, Esq., of Gray's Inn, Barrister-at-Law, Public Assistance Officer for the County of Kent.
CATTLE ON HIGHWAYS.	JOHN HALL, Esq., Clerk and Solicitor of the Fylde Water Board.
CELLAR DWELLINGS.	MISS E. BRIGHT ASHFORD, B.A., of the Middle Temple, Barrister-at-Law.
CEMETERIES.	R. C. MAXWELL, Esq., O.B.E., B.A., LL.D., of the Middle Temple, Barrister-at-Law.
CEMETERY SUPER-INTENDENT.	N. P. GREIG, Esq., B.A., of the Inner Temple, Barrister-at-Law.
CENSUS.	N. P. GREIG, Esq., B.A., of the Inner Temple, Barrister-at-Law.
	W. H. DUMSDAY, Esq., of Gray's Inn, Barrister-at-Law.

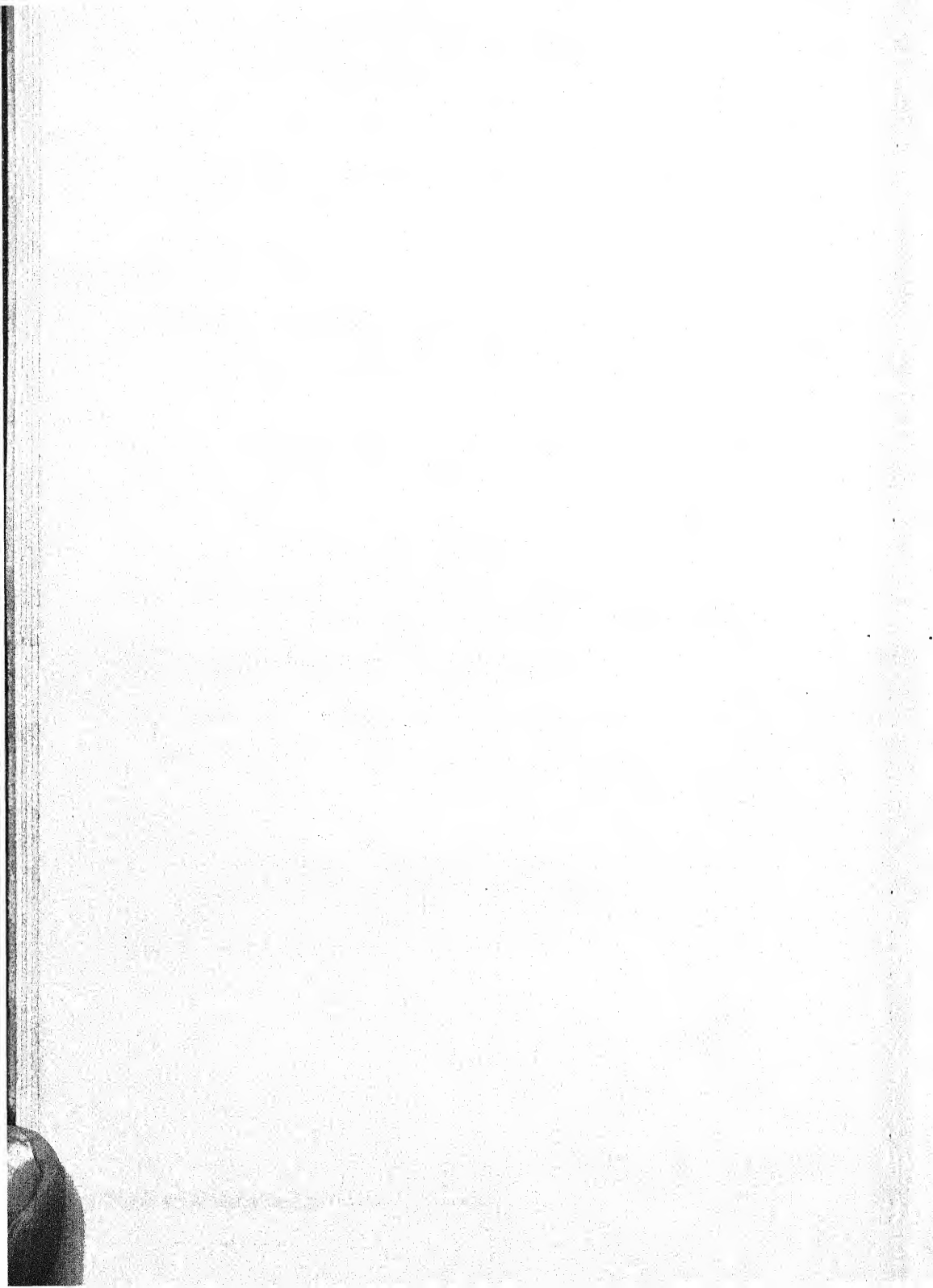


TABLE OF CONTENTS

AND

TABLE OF CROSS-REFERENCES

	PAGE
<i>Table of Abbreviations</i> - - - - -	xliii
<i>Table of Statutes</i> - - - - -	xlv
<i>Table of Cases</i> - - - - -	lxxxii

BANKERS' AND OTHER OVERDRAFTS - - - - -	1—4
INTRODUCTORY - - - - -	1
TEMPORARY LOANS - - - - -	1
FINANCING CAPITAL EXPENDITURE - - - - -	2
RAISING MONEY BY ISSUE OF STOCK - - - - -	3
POOLING OF BANK ACCOUNTS - - - - -	4
LONDON - - - - -	4

SEE ALSO TITLE:
Borrowing.

BARBED WIRE - - - - -	4—5
------------------------------	------------

SEE ALSO TITLES:
Highway Nuisances ; Overhead Wires.

BATH CHAIRS - - - - -	6—8
LICENSING - - - - -	6
BYE-LAWS - - - - -	6
MECHANICALLY-PROPELLED BATH CHAIRS - - - - -	6
LIGHTING - - - - -	7
EXCISE DUTY - - - - -	8
LONDON - - - - -	8

SEE ALSO TITLES:
Bicycles ; | *Motor Licences ;*
Hackney Carriages ; | *Road Traffic.*

BATHING - - - - -	8—11
RIGHTS OF BATHING ON THE SEASHORE - - - - -	8
PROVISION OF BATHING SHEDS AND LIFE-SAVING APPLIANCES - - - - -	9
BYE-LAWS - - - - -	9

BATHING—*continued.*

PAGE

OFFENCES AND PENALTIES	-	-	-	-	-	-	11
LONDON	-	-	-	-	-	-	11

SEE ALSO TITLES:

<i>Baths and Washhouses ;</i>	<i>Esplanades, Promenades</i> <i>and Beaches.</i>
-------------------------------	--

BATHING HUTS.*See BATHING.***BATHS AND WASHHOUSES** - - - - - **12—28**

PRELIMINARY OBSERVATIONS	-	-	-	-	-	12
POWERS OF THE MINISTER OF HEALTH	-	-	-	-	-	13
ADOPTION OF ACTS	-	-	-	-	-	14
Boroughs and Urban Districts	-	-	-	-	-	14
Rural Parishes	-	-	-	-	-	14
Rural Districts	-	-	-	-	-	14
EXECUTION OF ACTS	-	-	-	-	-	14
ACQUISITION AND DISPOSAL OF LAND	-	-	-	-	-	15
ACQUISITION OF EXISTING BATHS AND WASHHOUSES	-	-	-	-	-	17
PROVISION OF BATHS, WASHHOUSES, ETC.	-	-	-	-	-	18
CONTRACTS	-	-	-	-	-	18
NATURE OF ACCOMMODATION AND USE OF BATHS, ETC.	-	-	-	-	-	19
Baths	-	-	-	-	-	19
Washhouses	-	-	-	-	-	20
SUPPLY OF WATER AND GAS	-	-	-	-	-	20
OFFICERS	-	-	-	-	-	21
BYE-LAWS	-	-	-	-	-	22
PROCEEDINGS AGAINST OFFENDERS	-	-	-	-	-	24
CHARGES	-	-	-	-	-	25
INCOME AND EXPENDITURE	-	-	-	-	-	26
ACCOUNTS AND AUDIT	-	-	-	-	-	26
SALE OF BATHS AND WASHHOUSES	-	-	-	-	-	26
BORROWING POWERS	-	-	-	-	-	26
LONDON	-	-	-	-	-	28

SEE ALSO TITLES:

<i>Adoptive Acts ;</i>	<i>Music, Singing and</i>
<i>Bathing ;</i>	<i>Dancing.</i>
<i>Entertainments, Provision</i> <i>of ;</i>	

BEACHES.*See ESPLANADES, PROMENADES AND BEACHES.*

	PAGE
BEATING THE BOUNDS - - - - -	29—31
THE CUSTOM OF PERAMBULATION OR BEATING THE BOUNDS	29
PASSAGE OF PERAMBULATIONS OVER PRIVATE PROPERTY -	29
EXPENSES OF PERAMBULATIONS - - - - -	30
EFFECT OF EVIDENCE OF PERAMBULATIONS - - -	30
LONDON - - - - -	31
BEGGING - - - - -	32—34
SCOPE OF ARTICLE - - - - -	32
P.H.A., 1875 - - - - -	32
Beggars resorting to Common Lodging-Houses -	32
CHILDREN AND YOUNG PERSONS ACT, 1933 - - -	32
Use of Persons under 16 for Begging - - -	32
Care and Protection of Children found Begging -	33
Local Authorities - - - - -	34
VAGRANCY ACT, 1824 - - - - -	34
Children Procured or Encouraged to Beg - - -	34
London - - - - -	34

SEE ALSO TITLES :

Infants, Children and Lodging-Houses.
Young Persons ;

BETTERMENT - - - - -	35—53
INTRODUCTION - - - - -	35
Betterment or Improvement Charge - - -	37
Set-off - - - - -	37
Recoupment - - - - -	37
EARLY BETTERMENT PROVISIONS - - - - -	37
REPORT OF THE SELECT COMMITTEE OF 1894 - - -	38
MINISTRY OF RECONSTRUCTION REPORT, 1918 -	40
Betterment - - - - -	40
Injurious Affection - - - - -	41
Recoupment - - - - -	41
LATER BETTERMENT PROVISIONS - - - - -	42
LIGHT RAILWAYS ACT, 1896 - - - - -	43
Set-off - - - - -	43
DEVELOPMENT AND ROAD IMPROVEMENT FUNDS ACT, 1909	43
Set-off - - - - -	43
Recoupment - - - - -	44
UNEMPLOYMENT (RELIEF WORKS) ACT, 1920 - -	44
Set-off - - - - -	45
Recoupment - - - - -	45
ROADS IMPROVEMENT ACT, 1925 - - - - -	46
Set-off - - - - -	46
P.H.A., 1925 - - - - -	47
Set-off - - - - -	47
Recoupment - - - - -	47

BETTERMENT—*continued.*

PAGE

HOUSING ACT, 1930	—	—	—	—	—	—	—	—	48
Set-off	—	—	—	—	—	—	—	—	48
PUBLIC WORKS FACILITIES ACT, 1930	—	—	—	—	—	—	—	—	48
TOWN AND COUNTRY PLANNING ACT, 1932	—	—	—	—	—	—	—	—	49
Claim for Betterment	—	—	—	—	—	—	—	—	50
Deferment and Withdrawal of Claim	—	—	—	—	—	—	—	—	50
Renewal of Claim	—	—	—	—	—	—	—	—	50
Assessment of Claims	—	—	—	—	—	—	—	—	52
Application of Betterment Moneys	—	—	—	—	—	—	—	—	53

SEE ALSO TITLES:

<i>Compensation for Town Planning ;</i>	<i>Regional Planning ;</i>
<i>Compensation on Acquisition of Land ;</i>	<i>Town and Country Planning ;</i>
<i>Compulsory Purchase of Land ;</i>	<i>Town Planning Agreements with Owners ;</i>
<i>Garden Cities ;</i>	<i>Town Planning Authorities ;</i>
<i>London Town Planning ;</i>	<i>Town Planning Schemes.</i>
<i>Outgrowths ;</i>	

BETTING — — — — — 53—55

PRELIMINARY NOTE	—	—	—	—	—	—	—	—	53
STREETS AND PUBLIC PLACES	—	—	—	—	—	—	—	—	54
BYE-LAWS	—	—	—	—	—	—	—	—	54
LONDON	—	—	—	—	—	—	—	—	55

SEE ALSO TITLES:

*Disorderly Houses ; Highway Nuisances.***BICYCLES** — — — — — 55—57

INTRODUCTORY	—	—	—	—	—	—	—	—	55
BICYCLES ON FOOTPATHS	—	—	—	—	—	—	—	—	55
HIGHWAY CODE	—	—	—	—	—	—	—	—	56
SIGNALLING APPROACH	—	—	—	—	—	—	—	—	56
LIGHTING	—	—	—	—	—	—	—	—	56
LONDON	—	—	—	—	—	—	—	—	57

SEE ALSO TITLE:

*Road Traffic.***BILL POSTING** — — — — — 57—59

SCOPE OF ARTICLE	—	—	—	—	—	—	—	—	57
NUISANCES IN CONNECTION WITH BILL POSTING	—	—	—	—	—	—	—	—	58
ADVERTISEMENTS ON LICENSED HOARDINGS	—	—	—	—	—	—	—	—	58
SAFETY OF STREET HOARDINGS	—	—	—	—	—	—	—	—	58
LONDON	—	—	—	—	—	—	—	—	59

SEE ALSO TITLES:

<i>Advertisements ;</i>	<i>Offensive Behaviour ;</i>
<i>Highway Nuisances ;</i>	<i>Rating of Special Properties.</i>

	PAGE
BILLIARDS - - - - -	59—60
LICENSING - - - - -	59
OFFENCES AGAINST TENOR OF LICENCE - - - - -	60
RIGHT OF ENTRY BY CONSTABLE - - - - -	60
LONDON - - - - -	60
BILLS, BORROWING BY - - - - -	61—65
INTRODUCTORY NOTE - - - - -	61
NATURE AND PURPOSE - - - - -	61
MODE OF ISSUE - - - - -	62
COSTS OF ISSUE - - - - -	62
RECORDS - - - - -	62
INTEREST - - - - -	62
REPAYMENT - - - - -	63
CRITICISMS OF THE USE OF BILLS - - - - -	63
MODEL CLAUSE - - - - -	64
LONDON - - - - -	65

SEE ALSO TITLES :

Bankers and Other Over- | *Borrowing.*
drafts ;

BILLS, PARLIAMENTARY AND PRIVATE - - - - -	66—88
INTRODUCTION - - - - -	66
PROMOTION - - - - -	68
A. REQUIREMENTS OF L.G.A., 1933, AS TO PROMOTION	68
1. Procedure on Promotion - - - - -	68
2. The Resolution - - - - -	68
3. Approval by Local Government Electors - - - - -	69
4. How Wishes of Electors Ascertained - - - - -	69
5. Meeting of Local Government Electors - - - - -	69
6. When Poll may be Demanded - - - - -	70
7. How Poll is taken - - - - -	70
8. Penalties for Offences in Connection with Poll - - - - -	70
9. Equality of Votes at Meeting or Poll - - - - -	71
10. Duty of Council if Meeting or Poll against Resolution - - - - -	71
11. Failure to Comply with Statutory Requirements - - - - -	71
12. Special Powers of Local Authorities - - - - -	71
B. STANDING ORDERS AS TO PROMOTION - - - - -	71
Classes of Private Bills - - - - -	72
Procedure on Promotion - - - - -	72
1. Not later than November 20. Deposit of Plans, etc. - - - - -	72
2. Not later than November 27. Deposit of Bills with Parliament - - - - -	76
3. Not later than December 4. Deposit of Bills with Government Departments and other Authorities ; Deposit of Estimates - - - - -	76

BILLS, PARLIAMENTARY AND PRIVATE—continued. PAGE**B. STANDING ORDERS AS TO PROMOTION—continued.**

4. Not later than December 5. Notices to Owners, etc. in case of certain Bills — — — —	78
5. Not later than December 11. Notices to Owners, etc. in case of certain other Bills; Newspaper and Gazette Notices; Statement as to Working-class Houses — — — —	79

OPPOSITION — — — — —	83
----------------------	----

A. REQUIREMENTS OF L.G.A., 1933, AS TO OPPOSITION 83**B. STANDING ORDERS AS TO OPPOSITION** — — — 83

Petition against Bill — — — — —	83
Deposit of Petitions — — — — —	84
Late Petitions — — — — —	84
Petitions against Alterations — — — — —	84
Form of Petition — — — — —	84
Locus Standi — — — — —	84
Specific Locus Standi in Certain Cases — — —	85
Cases left to Discretion of House Authorities —	85
Expenses of Local Authority in Promotion or Opposition — — — — —	87

LONDON — — — — —	87
------------------	----

SEE ALSO TITLES :

<i>Costs ;</i>	<i>Provisional Orders ;</i>
<i>Parliamentary Agents ;</i>	<i>Sunday Entertainments ;</i>
<i>Private Acts ;</i>	<i>Town Meetings.</i>

BIRTH CONTROL — — — — — **89—94**

DEFINITION — — — — —	89
OBJECTIONS TO BIRTH CONTROL — — — — —	89
MEDICAL AND EUGENIC ASPECTS — — — — —	90
SOCIAL ASPECT — — — — —	90
ECONOMIC ASPECT — — — — —	90
LEGAL ASPECT — — — — —	91
HISTORY — — — — —	91
THE GROWTH OF PUBLIC OPINION IN THE POST-WAR PERIOD	91
GOVERNMENT POLICY IN REGARD TO BIRTH CONTROL —	92
MATERNITY AND CHILD WELFARE CENTRES (INCLUDING ANTE-NATAL CLINICS) — — — — —	92
SPECIAL BIRTH CONTROL CLINICS — — — — —	93
GYNÆCOLOGICAL CLINICS — — — — —	93
CLINICS ESTABLISHED BY VOLUNTARY SOCIETIES — —	93
ACTION BY LOCAL AUTHORITIES — — — — —	94
METHODS TAUGHT AT CLINICS — — — — —	94
LONDON — — — — —	94

BIRTH CONTROL—*continued.*

SEE ALSO TITLES :

<i>Clinics ;</i>	<i>Maternity and Child</i>
<i>Dispensaries ;</i>	<i>Welfare ;</i>
<i>Health Visitors ;</i>	<i>Public Health ;</i>
<i>Hospital Services</i>	<i>Venereal Diseases.</i>
<i>(London) ;</i>	

BIRTHS, NOTIFICATION OF.

See NOTIFICATION OF BIRTHS AND MARRIAGES.

BIRTHS, REGISTRAR OF.

See REGISTRAR OF BIRTHS, DEATHS AND MARRIAGES.

BLIND ALLEY.

See DEDICATION AND ADOPTION OF HIGHWAYS.

	PAGE
BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN	96—108

EDUCATION OF BLIND AND DEAF CHILDREN	-	-	-	96
1. Blindness and Deafness Defined	-	-	-	96
2. The Parent's Duty	-	-	-	97
3. Enforcement of Parent's Duty	-	-	-	97
4. The Local Education Authority's Duty	-	-	-	97
EDUCATION OF DEFECTIVE AND EPILEPTIC CHILDREN	-	-	-	98
1. The Parent's Duty	-	-	-	98
2. Enforcement of the Parent's Duty	-	-	-	98
3. The Duty of the Local Education Authority to Ascertain what Children are Defective or Epileptic	-	-	-	99
4. Duty of the Local Education Authority to Educate Defective and Epileptic Children	-	-	-	100
5. Discontinuance of a Certified School	-	-	-	102
MENTALLY DEFECTIVE CHILDREN	-	-	-	102
1. Notification by Local Education Authority	-	-	-	102
2. Certifying Officers	-	-	-	103
3. Examinations by Certifying Officers	-	-	-	103
4. Children Placed under Supervision, Guardianship, etc.	-	-	-	104
5. Reports on Mentally Defective Children	-	-	-	105
GENERAL PROVISIONS RELATING TO THE EDUCATION OF BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN	-	-	-	105
1. Age of Compulsory Education	-	-	-	105
2. Parent's Contributions towards Cost of Education	-	-	-	106
3. Religious Instruction	-	-	-	107
EFFECT OF LOCAL GOVERNMENT ACT, 1929	-	-	-	107
LONDON	-	-	-	108

SEE ALSO TITLES :

<i>Blind Persons ;</i>	<i>Mental Disorder and</i>
<i>Education ;</i>	<i>Mental Deficiency.</i>
<i>Infants, Children and</i>	
<i>Young Persons ;</i>	

	PAGE
BLIND PERSONS - - - - -	108—120
BEFORE THE BLIND PERSONS ACT, 1920 - - - - -	108
BLIND PERSONS ACT, 1920 - - - - -	109
PENSIONS FOR BLIND PERSONS - - - - -	110
REGISTRATION OF CHARITIES - - - - -	110
SCHEMES TO PROMOTE THE WELFARE OF BLIND PERSONS -	111
CERTIFICATION AND REGISTRATION - - - - -	112
DEFINITIONS OF BLINDNESS - - - - -	112
ORDINARY RESIDENCE - - - - -	113
BLIND CHILDREN UNDER FIVE YEARS OF AGE - - -	113
EMPLOYMENT OF THE BLIND - - - - -	114
(i.) Workshops - - - - -	114
(ii.) Home Workers' Schemes - - - - -	114
UNEMPLOYABLE BLIND - - - - -	115
HOME TEACHING SERVICE - - - - -	116
L.G.A., 1929 - - - - -	116
MISCELLANEOUS - - - - -	118
PREVENTION OF BLINDNESS - - - - -	119
LONDON - - - - -	119

SEE ALSO TITLES :

<i>Ballot ;</i>	<i>Elections ;</i>
<i>Blind, Deaf, Defective and</i>	<i>Old Age Pensions Com-</i>
<i>Epileptic Children ;</i>	<i>mittees ;</i>
<i>Charities ;</i>	<i>Wireless.</i>

BLOCK GRANTS.*See GENERAL EXCHEQUER GRANTS.*

BOARD OF CONTROL - - - - -	121—129
INTRODUCTORY - - - - -	121
I. OUTLINE OF HISTORY AND PRESENT CONSTITUTION -	121
II. FUNCTIONS OF THE BOARD OF CONTROL UNDER THE LUNACY AND MENTAL TREATMENT ACTS - - -	123
(1) Examination of Documents - - - - -	123
(a) On Admission - - - - -	123
(b) Week-end, Month-end and Continuation Reports	124
(c) Correspondence - - - - -	124
(2) Visitation - - - - -	124
(3) Board's Power of Discharge - - - - -	125
(4) Care of Patients - - - - -	125
(5) Approval of Premises and Admission of Patients to Certain Forms of Care - - - - -	126

BOARD OF CONTROL—continued.

PAGE

III. FUNCTIONS OF THE BOARD OF CONTROL UNDER THE	
MENTAL DEFICIENCY ACTS - - - - -	127
(1) Examination of Documents - - - - -	128
(a) On Admission - - - - -	128
(b) Continuation Reports - - - - -	128
(2) Visitation - - - - -	128
(3) Board's Power of Discharge - - - - -	128
(4) Care of Patients - - - - -	129
(5) Approval of Premises - - - - -	129
(6) State Institutions - - - - -	129
LONDON - - - - -	129

SEE ALSO TITLES :

<i>Government Control ;</i>	<i>Mental Disorder and</i>
<i>Licensed Houses and</i>	<i>Mental Deficiency ;</i>
<i>Hospitals ;</i>	<i>Mental Hospitals ;</i>
<i>Medical Superintendent ;</i>	<i>Persons of Unsound</i>
<i>Mental Defectives ;</i>	<i>Mind.</i>

BOARD OF EDUCATION - - - - - 130—140

MEMBERS OF THE BOARD OF EDUCATION - - - - -	130
PROCEEDINGS OF THE BOARD OF EDUCATION - - - - -	131
DUTIES AND POWERS OF THE BOARD OF EDUCATION - - - - -	131
THE CONSULTATIVE COMMITTEE - - - - -	131
NON-STATUTORY BODIES - - - - -	132
THE ADULT EDUCATION COMMITTEE - - - - -	132
THE JUVENILE ORGANISATIONS COMMITTEE - - - - -	132
THE SECONDARY SCHOOLS EXAMINATIONS COUNCIL - - - - -	133
THE BURNHAM COMMITTEE - - - - -	133
THE ANNUAL REPORT - - - - -	134
INSPECTION - - - - -	134
DETERMINATION OF QUESTIONS AND DISPUTES - - - - -	134
(1) General Principles - - - - -	134
(2) Between Local Education Authorities and Managers of Non-Provided Schools - - - - -	135
(3) Sundry Instances - - - - -	135
PUBLIC INQUIRIES BY THE BOARD OF EDUCATION - - - - -	136
(i.) Endowment of Non-Provided Schools - - - - -	136
(ii.) Power to Enforce the Duties of a Local Education Authority - - - - -	136
(iii.) Grouping of Non-Provided Schools of the same Denomination - - - - -	136
(iv.) Approval of Bye-laws - - - - -	137
(v.) Compulsory Acquisition of Land - - - - -	137
(vi.) Whether a New School is Necessary - - - - -	137
FUNCTIONS THE BOARD DO NOT PERFORM - - - - -	137
EDUCATIONAL ENDOWMENTS - - - - -	138

BOARD OF EDUCATION—continued.

PAGE

GENERAL POLICY IN REGARD TO LOCAL EDUCATION	
AUTHORITIES	138

SEE ALSO TITLES :

<i>Constitutional Law ;</i>	<i>Government and Local</i>
<i>Education ;</i>	<i>Inspectors ;</i>
<i>Education Finance ;</i>	<i>Grants ;</i>
<i>Education Special</i>	<i>Inquiries ;</i>
<i>Services ;</i>	<i>Local Government ;</i>
<i>Government Control ;</i>	<i>Secretary of State.</i>

BOARD OF TRADE - - - - - **141—144**

ESTABLISHMENT AND CONSTITUTION OF THE BOARD	- - -	141
ALTERATIONS OF POWERS OF THE BOARD	- - -	141
GAS	- - - - -	142
WEIGHTS AND MEASURES	- - - - -	142
FORESHORE	- - - - -	143
GENERAL	- - - - -	143

SEE ALSO TITLES :

<i>Bye-laws ;</i>	<i>Inquiries ;</i>
<i>Constitutional Law ;</i>	<i>Pleasure Boats ;</i>
<i>Esplanades, Promenades</i>	<i>Sea Defence Works ;</i>
<i>and Beaches ;</i>	<i>Seashore ;</i>
<i>Gas ;</i>	<i>Secretary of State ;</i>
<i>Government and Local</i>	<i>Weights and Measures.</i>
<i>Inspectors ;</i>	
<i>Government Control ;</i>	

BOATS AND BOATMEN.*See PLEASURE BOATS.***BOATS, CANAL.***See CANAL BOATS.***BONDS** - - - - - **145—153**

INTRODUCTORY NOTE	- - - - -	145
CORPORATION BONDS	- - - - -	145
Mode of Issue	- - - - -	146
Price of Issue	- - - - -	146
Stamp Duty	- - - - -	147
Transfer and Transmission	- - - - -	147
Records	- - - - -	147
Interest	- - - - -	147
Repayment	- - - - -	148
Model Clause	- - - - -	152
LONDON	- - - - -	152

SEE ALSO TITLES :

<i>Borrowing ;</i>	<i>Redemption of Capital</i>
<i>Housing Bonds ;</i>	<i>Expenditure ;</i>
	<i>Stock.</i>

BONDS, HOUSING.

See HOUSING BONDS.BOOKS, ACCOUNTS, AWARDS, ETC.,
CUSTODY AND INSPECTION OF.*See* RECORDS AND DOCUMENTS.

BORIC ACID IN FOOD.

See PRESERVATIVES.

BOROUGH.

See CHARTERS OF INCORPORATION ; COMMON LAW CORPORATIONS ;
COUNTY BOROUGH ; MUNICIPAL CORPORATIONS.

BOROUGH ACCOUNTANT.

See FINANCIAL OFFICER.

	PAGE
BOROUGH ACCOUNTS—	154—163
GENERAL	154
POWER OF MINISTER OF HEALTH TO PRESCRIBE ACCOUNTS	156
THE ACCOUNTS (BOROUGH AND METROPOLITAN BOROUGH)	
REGULATIONS, 1930	157
Personal Accounts	157
Impersonal Accounts	157
Final Accounts	158
Balance Sheet	158
Primary Records and Accounts	158
Expenditure and Cost Accounts	159
Loan and Capital Accounts	159
DATE OF CLOSING ACCOUNTS	160
PUBLICATION OF ACCOUNTS	160
(1) Abstract of Accounts	160
(2) Epitome of Accounts	161
FINANCIAL RETURNS	161
LONDON	163

SEE ALSO TITLES :

*Accounts of Local Author-
ities ;
Audit ;
Auditors ;
Borrowing ;*

*Costing ;
Finance ;
Finance Department ;
Rate Accounts.*

BOROUGH ALDERMAN.

See ALDERMAN.

BOROUGH AUDITORS.

See AUDITORS.

BOROUGH BRIDGES.

See BRIDGES.

	PAGE
BOROUGH COUNCILLOR - - - - -	164—175
1. INTRODUCTION - - - - -	164
2. QUALIFICATIONS FOR OFFICE - - - - -	165
3. DISQUALIFICATIONS FOR OFFICE - - - - -	165
(a) Aliens and Infants - - - - -	165
(b) Bankruptcy - - - - -	165
(c) Conviction for Offence - - - - -	166
(d) Corrupt or Illegal Practices - - - - -	166
(e) Office of Profit - - - - -	167
(f) Official Persons - - - - -	167
(g) Poor Relief - - - - -	167
(h) Royal Forces - - - - -	168
(i) Surcharge - - - - -	168
4. PROCEEDINGS IN RESPECT OF DISQUALIFICATION - - - - -	168
5. DISABILITY FOR VOTING—INTEREST IN CONTRACTS - - - - -	170
6. EXEMPTION FROM OFFICE - - - - -	172
7. ACCEPTANCE OF OFFICE - - - - -	172
8. TERM AND TENURE OF OFFICE - - - - -	173
9. VACATION OF OFFICE - - - - -	173
Resignation - - - - -	173
Absence - - - - -	173
10. AMOTION FROM OFFICE - - - - -	174
11. LONDON - - - - -	175

SEE ALSO TITLES :

County Councillor ;
District Councillor ;

Elections ;
Metropolitan Borough.

BOROUGH ENGINEER AND SURVEYOR - - - - -	175—183
PRELIMINARY - - - - -	175
APPOINTMENT - - - - -	177
QUALIFICATIONS - - - - -	178
DUTIES - - - - -	179
INTEREST IN CONTRACTS - - - - -	179
CONSULTING SURVEYOR - - - - -	180
LONDON - - - - -	180

SEE ALSO TITLES :

County Surveyor ;
Duties and Powers of
Officers ;
Guarantee of Officers ;

Officers of Local Author-
ities ;
Superannuation.

BOROUGH FUNDS ACTS.

See BILLS, PARLIAMENTARY AND PRIVATE.

BOROUGH JUSTICES.

See JUSTICES OF THE PEACE.

BOROUGH MEDICAL OFFICER OF HEALTH.

See MEDICAL OFFICER OF HEALTH.

	PAGE
BOROUGH POLICE - - - - -	184—198
1. INTRODUCTORY - - - - -	184
2. BOROUGH POLICE FORCES - - - - -	185
3. CONTROL OF BOROUGH POLICE - - - - -	187
4. ORGANISATION OF A BOROUGH FORCE - - - - -	189
5. JURISDICTION OF A BOROUGH CONSTABLE - - - - -	190
6. STATUS OF A BOROUGH CONSTABLE - - - - -	191
7. POWERS OF A BOROUGH CONSTABLE - - - - -	192
8. DUTIES OF A BOROUGH CONSTABLE - - - - -	193
9. EXTRA DUTIES - - - - -	193
10. TRAFFIC CONTROL IN A BOROUGH - - - - -	194
11. APPOINTMENT OF A BOROUGH CONSTABLE - - - - -	195
12. PAY AND CONDITIONS OF SERVICE - - - - -	195
13. DISCIPLINE OF A BOROUGH POLICE FORCE - - - - -	196
14. RETIREMENT, ETC., FROM A BOROUGH FORCE - - - - -	197
LONDON - - - - -	198

SEE ALSO TITLES :

<i>Chief Constable ;</i>	<i>Special Constables ;</i>
<i>Commissioner of Police ;</i>	<i>Standing Joint Com-</i>
<i>Metropolitan Police ;</i>	<i>mittee ;</i>
<i>Police ;</i>	<i>Watch Committee.</i>
<i>Police Pensions ;</i>	

BOROUGH SURVEYOR.

See BOROUGH ENGINEER AND SURVEYOR.

BOROUGH TREASURER.

See TREASURER.

BOROUGH, ROYAL.

See ROYAL BOROUGHS.

BORROWING - - - - -	199—226
GENERAL - - - - -	199
ADVANTAGES AND DISADVANTAGES OF BORROWING - - - - -	200
BORROWING POWERS - - - - -	202
GOVERNMENTAL SANCTIONS TO LOANS - - - - -	203
FORM OF SANCTION - - - - -	204
LOANS NOT REQUIRING GOVERNMENTAL SANCTION - - - - -	204
RETURNS TO MINISTER - - - - -	205
FORMS OF BORROWING - - - - -	205

BORROWING—*continued.*

PAGE

SECURITY FOR LOANS	—	—	—	—	—	—	—	206
EARMARKING LOANS TO BORROWING POWERS	—	—	—	—	—	—	—	206
TRUSTEE SECURITIES	—	—	—	—	—	—	—	207
REPAYMENT OF LOANS	—	—	—	—	—	—	—	207
General	—	—	—	—	—	—	—	207
Periods for Repayment	—	—	—	—	—	—	—	209
Equation of Loan Periods	—	—	—	—	—	—	—	210
Date of Repayment	—	—	—	—	—	—	—	210
METHODS OF REPAYMENT	—	—	—	—	—	—	—	210
The Instalment Method	—	—	—	—	—	—	—	211
The Annuity Method	—	—	—	—	—	—	—	212
Sinking Funds	—	—	—	—	—	—	—	212
Rate of Accumulation	—	—	—	—	—	—	—	213
Adjustments of Sinking Fund	—	—	—	—	—	—	—	214
Redemption Funds	—	—	—	—	—	—	—	215
UTILISATION OF REDEMPTION AND SINKING FUNDS FOR NEW CAPITAL PURPOSES	—	—	—	—	—	—	—	216
CAPITAL ESTIMATES	—	—	—	—	—	—	—	218
FUNDED AND UNFUNDED DEBT	—	—	—	—	—	—	—	219
CAPITAL ASSETS	—	—	—	—	—	—	—	219
LOAN CONSOLIDATION	—	—	—	—	—	—	—	220
CAPITAL FUND	—	—	—	—	—	—	—	221
LONDON	—	—	—	—	—	—	—	223
City Corporation	—	—	—	—	—	—	—	223
Metropolitan Borough Councils	—	—	—	—	—	—	—	224
Metropolitan Water Board	—	—	—	—	—	—	—	224

SEE ALSO TITLES :

<i>Accounts of Local Authorities ;</i>	<i>Income Tax ;</i>
<i>Audit ;</i>	<i>Local Loans ;</i>
<i>Auditors ;</i>	<i>Mortgages ;</i>
<i>Bankers' and Other Overdrafts ;</i>	<i>Public Works Loans Act ;</i>
<i>Bills, Borrowing by ;</i>	<i>Redemption of Capital Expenditure ;</i>
<i>Bonds ;</i>	<i>Stock.</i>
<i>Capital Expenditure out of Income ;</i>	

BOUNDARIES, ALTERATION OF.

See ALTERATION OF AREAS ; COUNTY BOROUGH, CREATION OF ;
COUNTY REVIEW.

BOUNDS, BEATING THE.

See BEATING THE BOUNDS.

BOWLING GREENS.

See GAMES, PROVISION FOR.

	PAGE
BREAD - - - - -	227—230
SALE OF BREAD BY WEIGHT - - - - -	227
FANCY BREAD - - - - -	228
SAFEGUARDS FOR BAKERS - - - - -	229
SCALES AND WEIGHTS IN SHOPS - - - - -	229
PROSECUTIONS - - - - -	229
OTHER STATUTES - - - - -	230
LONDON - - - - -	230
<i>For Adulteration of Bread</i> - - - - -	- SEE TITLE <i>Adulteration of Food.</i>
<i>Bakehouses</i> - - - - -	„ <i>Bakehouses.</i>
<i>Administrative, Local Authorities' and General Requirements of Weights and Measures Acts</i> - - - - -	„ <i>Food and Drugs ; Weights and Measures.</i>
<i>Unsound Bread</i> - - - - -	„ <i>Unsound Food.</i>

BREAKING UP OF ROADS - - - - -	230—240
GENERAL - - - - -	230
STATUTORY RIGHTS OF LOCAL AUTHORITIES - - - - -	232
Sewers - - - - -	232
Water - - - - -	232
Gas - - - - -	233
Tramways and Light Railways - - - - -	233
Electricity - - - - -	234
Telegraphic Services - - - - -	234
Frequent Breaking Up - - - - -	234
STATUTORY UNDERTAKERS - - - - -	235
Gas and Water - - - - -	235
Tramways and Light Railways - - - - -	236
Electricity - - - - -	237
BREAKING UP ROADS BY PRIVATE PERSONS - - - - -	238
INCIDENTAL OBLIGATIONS AND ALTERATION OF PIPES ON STREET IMPROVEMENTS - - - - -	238
Lighting and Guarding the Works - - - - -	238
Reinstatement - - - - -	239
Alteration of Water or Gas Pipes on Street Improvements - - - - -	240
LONDON - - - - -	240

SEE ALSO TITLES :

<i>Electricity Supply ;</i>	<i>Misfeasance and Non-</i>
<i>Gas ;</i>	<i>feasance ;</i>
<i>Hydraulic Power ;</i>	<i>Postal, Telegraph and</i>
<i>Level Crossings ;</i>	<i>Telephone Services ;</i>
<i>London Roads and</i>	<i>Tramways and Road and</i>
<i>Traffic ;</i>	<i>Sewer and Drain titles</i>
	<i>passim.</i>

BRIBERY.

See CORRUPTION IN OFFICE.

BRIDGE TOLLS.

See TOLLS AND STALLAGES.

	PAGE
BRIDGES - - - - -	241—259
PRELIMINARY - - - - -	241
THE COUNTY BRIDGE - - - - -	244
PRESENT POSITION - - - - -	245
APPROACHES - - - - -	246
RATIONE TENURE - - - - -	247
AGREEMENTS - - - - -	248
THE MINISTRY OF TRANSPORT - - - - -	248
PROHIBITION AND RESTRICTION OF USER - - - - -	249
STATUTORY OWNERS - - - - -	250
BRIDGES ACT, 1929 - - - - -	252
TOLL BRIDGES - - - - -	255
FOOTBRIDGES - - - - -	257
PROTECTION OF AMENITIES - - - - -	257
NUISANCES ON BRIDGES - - - - -	258
Remedies - - - - -	259
LONDON - - - - -	259

SEE ALSO TITLES :

<i>Bills, Parliamentary and Private ;</i>	<i>Highway Authorities ;</i>
<i>Breaking Up of Roads ;</i>	<i>Ministry of Transport ;</i>
<i>Bridges Over Streets ;</i>	<i>Seats ;</i>
<i>Ferries ;</i>	<i>Unreasonable and Excessive User ;</i>

BRIDGES OVER STREETS - - - - -	260—262
GENERAL OBSERVATIONS - - - - -	260
LICENCES - - - - -	260
LOCAL AUTHORITIES CONCERNED - - - - -	261
PENALTIES - - - - -	261
LONDON - - - - -	261

SEE ALSO TITLES :

<i>Bridges ;</i>	<i>Roads or Streets.</i>
<i>Delegation of Highway Powers ;</i>	

BRIDLEWAY.

See ROADS CLASSIFICATION.

BRINE PUMPING - - - - -	262—265
--------------------------------	----------------

BROTHELS.

See DISORDERLY HOUSES.

	PAGE
BUDGETARY CONTROL	265—281
THE NEED FOR CONTROL OF EXPENDITURE	265
THE PRACTICE OF BUDGETING	267
THE IMPLICATIONS OF BUDGETARY CONTROL	269
General Considerations	269
Rate Stabilisation	271
Rate Rationing	272
Rationalisation	274
THE REVENUE BUDGET	275
SUPPLEMENTARY ESTIMATES	277
THE CAPITAL BUDGET	278

SEE ALSO TITLES :

*Accounts of Local Authorities ;
Borrowing ;
Finance ;
Finance Committee ;*

*Finance Department ;
Grants ;
Rate Estimates ;
Rates and Rating.*

BUILDING	281—289
INTRODUCTORY	281
CONTROL BY BYE-LAWS	282
Building Bye-laws	282
Exemption from Bye-laws	284
Enforcement of Bye-laws	284
Height of Buildings	284
Basements Below Ground	285
Classification of Buildings	285
Factories	285
BUILDING LINES	286
CONTROL OVER APPEARANCE OR DESIGN	286
BACK-TO-BACK HOUSES	286
DANGEROUS STRUCTURES	287
Notices to be Served	287
SAFETY OF THE PUBLIC	287
Public Buildings	287
Precautions during Building Operations	288
Platforms and Stands	289
SANITARY CONVENIENCES	289
Generally	289
Factories	289
LONDON	289

BUILDING—continued.

SEE ALSO TITLES :

*Amenities ;**Ashpits ;**Back-to-Back Houses ;**Bridges Over Streets ;**Building and Improvement Lines ;**Building Bye-laws ;**Cellar Dwellings ;**Cesspools ;**Chimneys ;**Cinematographs ;**Closets, Conversion of ;**Control of Elevation ;**Dangerous Buildings ;**Density of Buildings ;**Drains ;**Factories and Workshops ;**Fire Protection ;**Flats ;**Housing ;**Insanitary Houses ;**London Building ;**Overcrowding ;**Plans ;**Projections over Highways ;**Reconditioning of Houses ;**Road Making and Improvement ;**Safety Provisions of Buildings and Stands ;**Sanitary Conveniences ;**Slum Clearance ;**Smoke Abatement ;**Tents, Sheds and Vans ;**Town and Country Planning ;**Water Supply.*

PAGE

BUILDING AND IMPROVEMENT LINES — — — 290—297

INTRODUCTORY — — — — — 290

BUILDING LINES — — — — — 291

On Reconstruction of Buildings — — — — — 291

On Erection or Alteration of Buildings — — — — — 292

Exemptions — — — — — 293

Vaults and Cellars — — — — — 293

THE ROADS IMPROVEMENT ACT, 1925 — — — — — 294

Obstruction of View at Corners — — — — — 294

Prescription of Building Lines — — — — — 294

Registration as Local Land Charge — — — — — 295

THE PUBLIC HEALTH ACT, 1925 — — — — — 295

Prescription of Improvement Line — — — — — 295

LONDON — — — — — 297

SEE ALSO TITLES :

*Building ;**Road Making and Improvement ;**Road Traffic ;**Roads or Streets ;**Town and Country Planning.***BUILDING BYE-LAWS— — — — — 298—307**

I. GENERAL POWERS — — — — — 298

Extension of 1890 — — — — — 299

Approval of Plans — — — — — 300

Height of Buildings, Chimneys, etc. — — — — — 300

Operations Treated as Erection of New Buildings — — — — — 300

Application of New Street Bye-laws — — — — — 301

Smoke Abatement — — — — — 301

BUILDING BYE-LAWS—continued.

I. GENERAL POWERS—continued.	PAGE
Fire Precautions — — — — —	301
Housing of Working Classes — — — — —	301
Back-to-Back Houses — — — — —	302
Suspension of Bye-laws — — — — —	302
Application for Confirmation — — — — —	302
II. MODEL BYE-LAWS AS TO NEW STREETS AND BUILDINGS	302
III. NEW BUILDINGS — — — — —	303
Classification — — — — —	303
What is a New Building — — — — —	303
IV. APPROVAL OF PLANS — — — — —	305
Submission of Plans — — — — —	305
Retention — — — — —	305
Period for Approval — — — — —	305
Commencement of Work — — — — —	306
Enforcement of Conditions on Approval of New Street —	306
V. ALTERATION OF BUILDINGS — — — — —	306
Bye-laws — — — — —	306
Conversion of Buildings — — — — —	306
VI. HOARDS DURING BUILDING — — — — —	307

SEE ALSO TITLES :

<i>Advertisements ;</i>	<i>Housing ;</i>
<i>Ashpits ;</i>	<i>Insanitary Houses ;</i>
<i>Back-to-Back Houses ;</i>	<i>London Building ;</i>
<i>Building ;</i>	<i>Plans ;</i>
<i>Bye-laws ;</i>	<i>Repair of Roads ;</i>
<i>Cesspools ;</i>	<i>Road Making and Im-</i>
<i>Chimneys ;</i>	<i>provement ;</i>
<i>Cinematographs ;</i>	<i>Safety Provisions of</i>
<i>Closets, Conversion of ;</i>	<i>Buildings and Stands ;</i>
<i>Dangerous Buildings ;</i>	<i>Sanitary Conveniences ;</i>
<i>Drains ;</i>	<i>Smoke Abatement ;</i>
<i>Factories and Workshops ;</i>	<i>Tents, Sheds and Vans ;</i>
<i>Fire Protection ;</i>	<i>Town Planning Schemes ;</i>
<i>Flats ;</i>	<i>Water Supply.</i>

BUILDINGS, SAFETY PROVISIONS OF.

See SAFETY PROVISIONS OF BUILDINGS AND STANDS.

BUILDINGS, SANITARY CONVENIENCES IN.

See SANITARY CONVENIENCES.

BURGESS ROLL.

See REGISTRATION OF ELECTORS.

	PAGE
BURIAL AND CREMATION	308—313
GENERAL OBSERVATIONS	308
RIGHTS AND DUTIES OF PRIVATE PERSONS	309
THE DEVELOPMENT OF THE POLICY OF BURIAL LAW IN ENGLAND	311
MISCELLANEOUS RIGHTS OF BURIAL—	312
Murderers	312
Felo de se	312
Drowned Persons	312
Seamen	312
Persons Dying of Infectious Disease	312
Stillborn Children	313
CREMATION	313

SEE ALSO TITLES :

<i>Burial Authorities ;</i>	<i>Consecration ;</i>
<i>Burials and Burial</i>	<i>Corpses ;</i>
<i>Grounds ;</i>	<i>Cremation ;</i>
<i>Cemeteries ;</i>	<i>Disused Burial Grounds ;</i>
<i>Cemetery Superintendent ;</i>	<i>Mortuaries.</i>

FOR GENERAL LAW RELATING TO DISPOSAL OF THE DEAD, *See* HALSBURY'S LAWS OF ENGLAND, 2ND EDITION, VOL. 3, TITLE "BURIAL AND CREMATION," AND VOL. 11, TITLE "ECCLESIASTICAL LAW."

BURIAL AUTHORITIES	314—318
DEFINITION OF "BURIAL AUTHORITY"	314
FUNCTIONS OF BURIAL AUTHORITIES	315
DESCRIPTIONS OF BURIAL AUTHORITIES	316
(1) The Burial Board	316
(2) An Urban District Council	316
(3) A Borough Council	316
(4) A Parish Council	317
(5) A Joint Committee	317
CEMETERY AUTHORITIES	317
LONDON	317

SEE ALSO TITLES :

<i>Burials and Burial</i>	<i>Corpses ;</i>
<i>Grounds ;</i>	<i>Cremation ;</i>
<i>Burial and Cremation ;</i>	<i>Disused Burial Grounds ;</i>
<i>Cemeteries ;</i>	<i>Vestry.</i>
<i>Consecration ;</i>	

	PAGE
BURIALS AND BURIAL GROUNDS - - - -	320-351
INTRODUCTORY - - - - -	320
1. ADOPTION OF THE BURIAL ACTS - - - - -	320
Boroughs and Urban Districts - - - - -	321
Rural Parishes - - - - -	322
2. ACQUISITION OF BURIAL GROUNDS - - - - -	323
Private Burial Grounds - - - - -	323
Extension of Churchyard - - - - -	324
Under the Burial Acts - - - - -	324
A. Elective Burial Boards in Boroughs and Urban Districts - - - - -	325
(i.) Expenditure - - - - -	325
(ii.) Alienation of Lands - - - - -	325
(iii.) Restriction on Use of Land by the Burial Act, 1906 - - - - -	326
(iv.) Rateability - - - - -	326
(v.) Consecration - - - - -	326
(vi.) Finance - - - - -	327
B. Borough Council acting as Burial Board - - - - -	327
C. U.D.C. acting as Burial Board - - - - -	329
D. Parish Council acting as Burial Board - - - - -	329
E. Joint Burial Committees for Area Extending into (a) more than one Rural Parish, or (b) an Urban and a Rural Parish - - - - -	331
Note on the Selection of a Site for a New Burial Ground or Cemetery - - - - -	332
3. MANAGEMENT OF BURIAL GROUNDS - - - - -	332
A. The Parish Churchyard - - - - -	332
Registration of Burials in a Churchyard - - - - -	334
B. Burial Grounds under the Burial Acts - - - - -	335
C. Government Control and Supervision of Burial Grounds - - - - -	336
D. Practical Administration of a Burial Ground - - - - -	336
The Statutory Records - - - - -	337
(i.) Grave Plan - - - - -	337
(ii.) Register of Graves - - - - -	337
(iii.) Register of Burials - - - - -	338
Other Useful Forms - - - - -	339
Burial Ground Regulations - - - - -	339
The Burial Service - - - - -	340
Fees - - - - -	340
4. THE PRACTICE AND PROCEDURE OF BURIAL INCLUDING REGISTRATION - - - - -	342
A. Without Reference to Coroner - - - - -	342
(a) Medical Certificate - - - - -	342
(b) Registration - - - - -	342
(c) Burial - - - - -	343
(d) "Irregular" Certification - - - - -	344
B. With Reference to Coroner; Registration of Births and Stillbirths - - - - -	344
(a) Registration in Cases where Inquest Held - - - - -	345
(b) Certificates of Disposal - - - - -	346

BURIALS AND BURIAL GROUNDS—continued.		PAGE
5. BURIAL OF THE POOR	- - - - -	347
The Poor Law Act, 1930	- - - - -	347
Expenses of Burial	- - - - -	348
6. BURIAL OF ASHES AFTER CREMATION	- - - - -	348
7. PURCHASE AND TRANSFER OF RIGHTS OF BURIAL	- - - - -	349
Forms	- - - - -	350
LONDON	- - - - -	351

SEE ALSO TITLES :

<i>Burial and Cremation ;</i>	<i>Corpses ;</i>
<i>Burial Authorities ;</i>	<i>Cremation ;</i>
<i>Cemeteries ;</i>	<i>Disused Burial Grounds ;</i>
<i>Cemetery Superintendent ;</i>	<i>Mortuaries ;</i>
<i>Consecration ;</i>	<i>Open Spaces.</i>

BURNHAM SCALES.

See TEACHERS.

BUTTER, MARGARINE AND CHEESE	- - -	353—357
INTRODUCTORY	- - - - -	353
SPECIAL POWERS OF SAMPLING OFFICERS	- - - - -	354
SAMPLING OF BUTTER, ETC.	- - - - -	354
COMPOSITION OF BUTTER	- - - - -	354
BUTTER BLENDED WITH MILK	- - - - -	354
REGISTRATION OF BUTTER FACTORIES	- - - - -	355
COMPOSITION OF MARGARINE	- - - - -	355
MARGARINE FACTORIES, ETC.	- - - - -	356
LABELLING AND MARKING OF MARGARINE	- - - - -	356
CHEESE AND MARGARINE-CHEESE	- - - - -	358
LONDON	- - - - -	358

For Administrative Authorities - SEE TITLE *Food and Drugs Authorities.*

<i>Adulteration of Butter, etc.</i>	-	„	<i>Adulteration of Food.</i>
<i>Decomposed and Unsound Butter—</i>	-	„	<i>Unsound Food.</i>
<i>General Position</i>	- -	„	<i>Food and Drugs.</i>
<i>Marking of Imported Butter</i>	-	„	<i>Imported Food.</i>
<i>Preservatives and Colouring Matter in Butter, Margarine, etc.</i>	- - - - -	„	<i>Preservatives.</i>
<i>Sale of Butter, etc., by Weight</i>	-	„	<i>Weights and Measures.</i>

SEE ALSO TITLES :

<i>Artificial Cream ;</i>	<i>Inspectors of Food and</i>
<i>Condensed Milk ;</i>	<i>Drugs ;</i>
<i>Cream ;</i>	<i>Milk and Dairies ;</i>
<i>Ice Cream ;</i>	<i>Sampling of Food and</i>
	<i>Drugs.</i>

BUTTER-MILK.

See BUTTER, MARGARINE AND CHEESE.

	PAGE
BYE-LAWS - - - - -	359—378
INTRODUCTORY - - - - -	359
POWERS OF LOCAL AUTHORITIES TO MAKE BYE-LAWS -	361
Good Rule and Government - - - - -	361
Other Bye-laws - - - - -	361
PUBLICATION AND CONFIRMATION OF BYE-LAWS -	362
Procedure - - - - -	362
Publication of Confirmed Bye-laws - - - - -	363
Bye-laws made but not Confirmed before June, 1934 -	364
The P.H. (Confirmation of Bye-laws) Act, 1884 -	364
CHARACTERISTICS OF BYE-LAWS - - - - -	365
(1) Reasonableness - - - - -	365
(2) <i>Intra vires</i> of Authority by whom made -	367
(3) Repugnancy to the General Law - - - - -	368
(4) Certainty of Terms - - - - -	369
(5) Ambiguity - - - - -	369
ABROGATION OR WAIVER OF BYE-LAWS - - - - -	370
CONSTRUCTION OF BYE-LAWS - - - - -	371
PENALTIES FOR BREACH - - - - -	373
Imposition - - - - -	373
Evidence of Bye-laws - - - - -	373
Recovery of Penalty - - - - -	374
Injunction - - - - -	374
LONDON - - - - -	375
General - - - - -	375
Metropolitan Borough Councils - - - - -	375
Summary - - - - -	376
(1) L.C.C. - - - - -	376
(2) Metropolitan Borough Councils - - - - -	378

SEE ALSO TITLES :

<i>Building Bye-laws ;</i>	<i>Nuisances ;</i>
<i>Common Law Corpora-</i>	<i>Ultra Vires ;</i>
<i>tions ;</i>	Also specific titles for
<i>Constitutional Law ;</i>	particular bye-law
<i>Good Rule and Govern-</i>	making powers, e.g.
<i>ment ;</i>	<i>Museums.</i>
<i>Model Bye-laws and</i>	
<i>Clauses ;</i>	

BY-PASS ROADS - - - - -	379—383
INTRODUCTORY - - - - -	379
BY-PASSES ON MINISTRY OF TRANSPORT ROADS -	380
BY-PASSES ON HIGHWAY AUTHORITIES' ROADS -	382
PROTECTION OF BY-PASS ROADS - - - - -	382

BY-PASS ROADS—*continued.*

SEE ALSO TITLES :

*Road Amenities ;
Road Grants ;**Road Making and Im-
provement ;
Road Classification.***CABLES.***See* ELECTRICITY SUPPLY ; HARBOURS.

	PAGE
CABMEN'S SHELTERS - - - - -	383—384

SEE ALSO TITLES :

*Hackney Carriages ; London Roads and Traffic ;
Road Traffic.***CABS.***See* HACKNEY CARRIAGES ; LONDON ROADS AND TRAFFIC.**CALCIUM CARBIDE.***See* CARBIDE OF CALCIUM.

CAMBRIDGE, BOROUGH OF - - - - -	385—386
--	----------------

CAMPS.*See* EDUCATION SPECIAL SERVICES ; TENTS, SHEDS AND VANS.

CANAL BOATS - - - - -	387—391
INTRODUCTORY - - - - -	387
REGISTRATION - - - - -	388
MARKING, ETC. - - - - -	389
SANITARY CONDITIONS - - - - -	389
INFECTIOUS AND OTHER SERIOUS DISEASES - - - - -	389
EDUCATIONAL PROVISIONS - - - - -	390
GENERAL - - - - -	390
LONDON - - - - -	391

SEE ALSO TITLE :

Canals.

CANALS - - - - -	392—399
GENERAL OBSERVATIONS - - - - -	392
BRIDGES AND APPROACHES - - - - -	393
TOWING-PATHS - - - - -	394
SEWERS AND POLLUTION - - - - -	395
BUILDINGS AND SKY SIGNS - - - - -	396

CANALS—*continued.*

PAGE

CONSTRUCTION OF WORKS BY LOCAL AUTHORITIES	-	-	396
PRIVATE STREET WORKS	-	-	397
OTHER SAVINGS FOR CANAL COMPANIES	-	-	397
LONDON	-	-	399

SEE ALSO TITLES :

*Canal Boats ;**Pollution of Rivers ;**Rating of Special Properties.***CANALS, RATING OF.***See RAILWAYS, RATING OF ; RATING OF SPECIAL PROPERTIES.*

CANCER	-	-	-	-	-	-	-	-	-	400—406
DEFINITION	-	-	-	-	-	-	-	-	-	400
POWERS AND DUTIES OF LOCAL HEALTH AUTHORITIES	-									400
RECOMMENDATIONS TO LOCAL AUTHORITIES AND COUNTY COUNCILS	-	-	-	-	-	-	-	-	-	400
REASONS FOR ACTION BY LOCAL AUTHORITY	-	-								401
NOTIFICATION OF CANCER	-	-	-	-	-	-	-	-	-	401
OCCUPATIONAL CANCER	-	-	-	-	-	-	-	-	-	402
RADIUM AND X-RAYS IN THE TREATMENT OF CANCER	-									402
MEDICAL RESEARCH COUNCIL (SPECIAL RESEARCH SERIES)										403
CENTRAL MIDWIVES BOARD AND CANCER	-	-								403
REPORTS ON PUBLIC HEALTH AND MEDICAL SUBJECTS	-									403
CIRCULARS AND MEMORANDA	-	-	-	-	-	-	-	-	-	404

SEE ALSO TITLES :

*Clinics ;**Diseases ;**Hospitals ;**Public Health.***CANDIDATE.***See ELECTIONS.***CANNED FOOD.***See ADULTERATION OF FOOD.***CAPITAL ASSETS.***See BORROWING.***CAPITAL EXPENDITURE.**

See BOROUGH ACCOUNTS ; COUNTY ACCOUNTS ; RURAL DISTRICT COUNCIL ACCOUNTS ; URBAN DISTRICT COUNCIL ACCOUNTS.

	PAGE
CAPITAL EXPENDITURE OUT OF INCOME	407—410
INTRODUCTORY NOTE	407
ADVANTAGES	408
TRADING UNDERTAKINGS	409
SANCTION	409
ELECTRICITY UNDERTAKINGS	409
CONCLUSIONS	410

SEE ALSO TITLE :

Finance.

CARAVANS.

See TENTS, SHEDS AND VANS.

CARBIDE OF CALCIUM	411—412
APPLICATION OF PETROLEUM ACT	411
QUANTITY KEPT WITHOUT A LICENCE	411
CARBIDE OF CALCIUM IN LIGHTHOUSES	412
CARBIDE OF CALCIUM IN SEWERS	412
LONDON	412

SEE ALSO TITLES :

Explosives ;

Petroleum.

CARE AND PROTECTION OF CHILDREN AND YOUNG PERSONS

MEANING OF "IN NEED OF CARE OR PROTECTION"	412
DUTY OF LOCAL AUTHORITY	413
POWERS OF THE JUVENILE COURT	414
POWERS OF OTHER COURTS	414
DATE OF OPERATION	415
LONDON	415

SEE ALSO TITLES :

*Approved Schools ;
Fit Person ;
Infant Life Protection ;
Infants, Children and
Young Persons ;*

*Juvenile Offenders ;
Refractory Children ;
Remand Homes.*

CARRIAGEWAY.

See ROADS CLASSIFICATION.

	PAGE
CASE-PAPER SYSTEM	416—423
PRELIMINARY OBSERVATIONS	416
RECORDS OF RECIPIENTS OF POOR LAW RELIEF	417
(1) Records of the Decisions of the Committee	417
(2) Record of Circumstances	418
(3) Particulars on Later Investigations	419
(4) Statement as to Liable Relatives	419
(5) Settlement	419
CENTRAL INDEX OF PUBLIC ASSISTANCE	419
CENTRAL ORGANISATION AND CONTROL	420
RELATION TO PUBLIC HEALTH AND OTHER DEPARTMENTS	421
(1) Treatment of Tuberculosis	421
(2) Orthopædic Scheme	422
(3) Maternity and Child Welfare Scheme	422
(4) School Medical Service	422
(5) Mental Defectives	422
(6) Necessitous and Unemployable Blind	422
(7) Educational Grants	422
(8) Provision of Meals for Children	422
LONDON	423

SEE ALSO TITLE :

Public Assistance.

CASE STATED	423—435
1. BY A COURT OF SUMMARY JURISDICTION	423
(i.) Generally	423
(ii.) Procedure	425
(iii.) Time for Stating Case	426
(iv.) Form of Special Case	429
(v.) Hearing and Determination	430
2. BY QUARTER SESSIONS	431
A. By Consent of the Parties	431
B. At the Discretion of the Justices	432
(i.) Generally	432
(ii.) Procedure and Hearing	434
LONDON	435

SEE ALSO TITLE :

Appeals to the Courts.

CASTING VOTE.

See MEETINGS.

	PAGE
CASUAL VACANCY	436—439
DATE OF CASUAL VACANCIES	436
FAILURE TO ATTEND MEETINGS	436
ABSENCE OF MAYOR FROM BOROUGH	436
DECLARATION OF VACANCY	437
FILLING OF CASUAL VACANCY IN CASE OF CHAIRMAN, MAYOR OR ALDERMAN	437
CHAIRMAN OF PARISH MEETING	437
FILLING OF CASUAL VACANCIES IN CASE OF COUNCILLORS	437
DATE OF ELECTION	438
CASUAL VACANCY, PARISH COUNCILLORS	438
TERM OF OFFICE OF PERSONS FILLING CASUAL VACANCIES	438
LONDON	438

SEE ALSO TITLES :

*Acceptance of Office ;
Ballot ;
Corrupt and Illegal
Practices ;
Election Agents, Local
Government ;*

*Election Petition ;
Local Government Elec-
tors ;
Registration of Electors ;
Returning Officer.*

CASUALS	440—448
PRELIMINARY OBSERVATIONS	440
GENERAL OUTLINE	440
PROVISION OF CASUAL WARDS	441
MANAGEMENT OF CASUAL WARDS	442
THE ADMISSION OF CASUALS TO CASUAL WARDS	443
BATHING AND DISINFECTION	443
DISCHARGE OF CASUALS	443
SEARCHING	444
DIETARY	445
TASKS OF WORK	445
RELIGIOUS ADMINISTRATION	445
MEDICAL EXAMINATION AND ATTENTION	445
TRANSFERS TO INSTITUTIONS	446
ADOPTION OF CHILD CASUALS	446
PREVENTION OF CHILD CASUAL FROM RECEIVING EDUCATION	446
REMEDIAL MEASURES	447
DISQUALIFICATION FOR UNEMPLOYMENT INSURANCE BENEFIT	447
OFFENCES BY CASUALS	447
PUBLICATION OF NOTICES	448
LONDON	448

SEE ALSO TITLES :

*Joint Vagrancy Commit-
tees ;*

*Public Assistance ;
Vagrancy.*

	PAGE
CATCHMENT BOARDS	449—460
INTRODUCTORY	449
CONSTITUTION OF CATCHMENT BOARDS	450
ORDER CONSTITUTING A CATCHMENT BOARD	450
Notice of Intention to Make	450
Notice of Order Made	450
Validity of the Order	450
MAP OF CATCHMENT AREA	451
Notice of Preparation of Map	451
Approval of Map	451
Effect of Map	451
Variation of Map	451
APPOINTMENT OF MEMBERS OF BOARD	452
PERIOD OF OFFICE	452
VACATION OF AND DISQUALIFICATION FOR OFFICE	452
CASUAL VACANCIES	452
PROCEEDINGS OF THE BOARD	452
Standing Orders	452
Payment of Chairman and Expenses of Members	453
Evidence of Minutes	453
Disclosure of Member's Interest	453
POWERS AND FUNCTIONS OF CATCHMENT BOARDS	453
PREPARATION OF SCHEMES	453
For Transfer of Powers of Existing Authorities	453
For Reorganisation of Internal Drainage Boards, etc.	454
Varying Awards	454
Procedure (General)	454
POWERS IN CONNECTION WITH THE MAIN RIVER	454
POWERS OVER INTERNAL DRAINAGE BOARDS	455
General Supervision	455
Settlement of Disputes	455
Exercise of Powers on Default	455
Authority to inspect Documents	456
Transfer of Functions	456
COMMUTATION OF OBLIGATIONS TO REPAIR	456
Procedure	456
Remedies of the Landowner	457
Effect of Commutation	457
ACQUISITION OF ACCRETIONS OF LAND	457
POWERS AS TO BILLS AND PROVISIONAL ORDERS	458
SERVICE OF NOTICES	458
CROWN AND TIDAL LANDS	458
PROVISIONS OF LOCAL ACTS	458

CATCHMENT BOARDS—*continued.*

PAGE

FINANCIAL	-	-	-	-	-	-	-	-	458
Expenses of the Board : How Raised	-	-	-	-	-	-	-	-	458
Contributions from Internal Drainage Boards	-	-	-	-	-	-	-	-	459
Appeal against Assessments	-	-	-	-	-	-	-	-	459
Precepts	-	-	-	-	-	-	-	-	459
Grants from Public Funds	-	-	-	-	-	-	-	-	459
Borrowing Powers	-	-	-	-	-	-	-	-	460
LONDON	-	-	-	-	-	-	-	-	460

SEE ALSO TITLES :

Drainage Boards ;
Drainage Rates ;

Land Drainage.

CATTLE ON HIGHWAYS - - - - - **460—464**

DEFINITION	-	-	-	-	-	-	-	-	460
STATUTORY OFFENCES	-	-	-	-	-	-	-	-	461
BYE-LAWS	-	-	-	-	-	-	-	-	462
CIVIL ACTIONS	-	-	-	-	-	-	-	-	462
LONDON	-	-	-	-	-	-	-	-	463

SEE ALSO TITLES :

Animals, Keeping of ;
Highway Nuisances ;

London Roads and
Traffic ;
Road Traffic.

CELLAR DWELLINGS - - - - - **464—467**

MODERN CELLAR DWELLINGS	-	-	-	-	-	-	-	-	464
ANCIENT CELLAR DWELLINGS	-	-	-	-	-	-	-	-	464
PENALTY	-	-	-	-	-	-	-	-	465
CLOSING ORDER	-	-	-	-	-	-	-	-	465
UNDERGROUND ROOMS USED AS SLEEPING-PLACES	-	-	-	-	-	-	-	-	465
LONDON	-	-	-	-	-	-	-	-	466

SEE ALSO TITLE :

Insanitary Houses.

CELLAR FLAPS.

See ROAD PROTECTION.

CELLULOID.

See CINEMATOGRAPHS.

CEMENT WORKS.

See ALKALI, ETC., WORKS.

	PAGE
CEMETERIES - - - - -	468—483
PRELIMINARY - - - - -	468
I. CEMETERIES UNDER P.H. (INTERMENTS) ACT, 1879 -	469
Power to Provide - - - - -	469
Application of the Cemeteries Clauses Act, 1847 -	470
Acquisition or Appropriation of Land - - - - -	471
Sale or Letting of Surplus Land - - - - -	472
Chapels - - - - -	473
Loans for Cemeteries - - - - -	474
Control by the Ministry - - - - -	474
Maintenance of Cemetery - - - - -	475
Bye-laws and Regulations - - - - -	476
Fees - - - - -	477
Chaplains and other Officers - - - - -	478
Monumental Inscriptions - - - - -	478
Protection of the Cemetery - - - - -	478
Rating - - - - -	479
II. THE CEMETERIES CLAUSES ACT, 1847, AS APPLYING TO	
CEMETERY COMPANIES - - - - -	479
Introductory - - - - -	479
Acquisition of Land - - - - -	479
Chapels - - - - -	479
Enclosure of the Cemetery - - - - -	479
Roads, Drainage, etc. - - - - -	479
Consecration - - - - -	480
Removal of Bodies - - - - -	480
Chaplain, Burial Service - - - - -	480
Clerk, Gravediggers, etc. - - - - -	480
Exclusive Rights, Monuments, Inscriptions, etc. -	481
Payments to Incumbents and Parish Clerks - - -	481
Protection of the Cemetery - - - - -	482
Rating - - - - -	482
Registration of Burials - - - - -	482
FORM OF GRANT OF RIGHT OF BURIAL - - - - -	482
FORM OF ASSIGNMENT OF RIGHT OF BURIAL - - - - -	483
LONDON - - - - -	483

SEE ALSO TITLES :

<i>Burial and Cremation ;</i>	<i>Corpses ;</i>
<i>Burials and Burial</i>	<i>Cremation ;</i>
<i>Grounds ;</i>	<i>Mortuaries ;</i>
<i>Burial Authorities ;</i>	<i>Rating of Special Proper-</i>
<i>Cemetery Superintendent ;</i>	<i>ties.</i>
<i>Consecration ;</i>	

CEMETERIES, RATING OF.

See RATING OF SPECIAL PROPERTIES.

	PAGE
CEMETERY SUPERINTENDENT - - - - -	483—485
APPOINTMENT - - - - -	483
TENURE OF OFFICE - - - - -	484
RIGHTS AND DUTIES - - - - -	484
LONDON - - - - -	485

SEE ALSO TITLES:

Burials and Burial Grounds ; Cemeteries.

CENSORSHIP OF FILMS.

See CINEMATOGRAPHS.

CENSUS - - - - -	486—489
PRELIMINARY NOTE - - - - -	486
USE OF CENSUS STATISTICS - - - - -	486
CONTENTS OF CENSUS - - - - -	487
SPECIAL STATISTICS - - - - -	488
INTERIM STATISTICS - - - - -	488
REFERENCES TO THE CENSUS IN FUTURE ENACTMENTS	489
SPECIAL LOCAL CENSUS - - - - -	489
LONDON - - - - -	489

CENSUS ACT, 1920.

See LOCAL CENSUS.

TABLE OF ABBREVIATIONS USED IN THIS WORK

Attorney-General	A.-G.
Brothers	Bros.
Company	Co.
Corporation	Corpn.
Home Office	H.O.
Justices	JJ.
Limited	Ltd.
London County Council	L.C.C.
Local Government Act	L.G.A.
Medical Officer of Health	M.O.H.
Ministry of Agriculture and Fisheries	M. of A.
Ministry of Health	M. of H.
Ministry of Transport	M. of T.
Public Health Acts	P.H.A.
Railway Company	Rail. Co.
Rating and Valuation Act	R. & V.A.
Rural District Council	R.D.C.
Statutory Rules and Orders	S.R. & O.
Urban District Council	U.D.C.

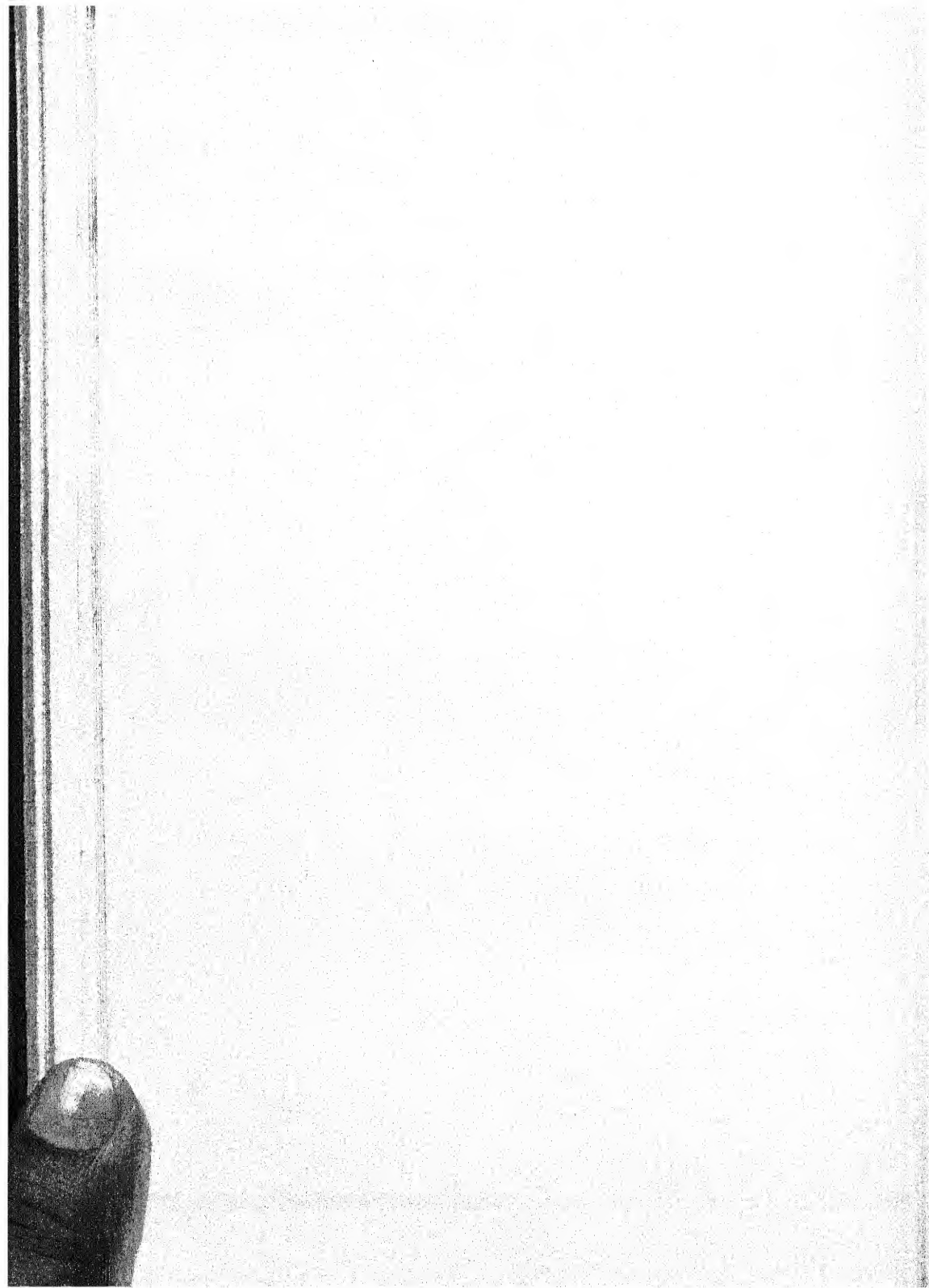


TABLE OF STATUTES

		PAGE
22 Hen. 8, c. 5.	(Statute of Bridges, 1530-1)—	
	s. 2	242
	s. 7	246
23 Hen. 8, c. 5.	(Statute of Sewers, 1531-2)	37
1 Edw. 6, c. 3.	(Vagabonds, etc., 1547)	440
5 & 6 Edw. 6, c. 4.	(Brawling in Churches, 1551-2), s. 2	334
2 & 3 Phil. & Mar. c. 8.	(Highways, 1555)	176
18 & 19 Car. 2, c. 8.	(Rebuilding of London, 1666), s. 26	37
9 Anne, c. 25.	(Municipal Offices Act, 1710)	169
13 Geo. 3, c. 78.	(Highway Act, 1773)	176
22 Geo. 3, c. 82.	(Civil List and Secret Service Money Act, 1782),	
	s. 15	141
28 Geo. 3, c. 64.	(Cambridge Improvement, 1787-8)	385
34 Geo. 3, c. 104.	(Cambridge Improvement, 1794)	385
43 Geo. 3, c. 59.	(Bridges Act, 1803)	243
	s. 1	242, 258
	s. 2	242
	s. 5	242
48 Geo. 3, c. 75.	(Burial of Drowned Persons Act, 1808)	312
52 Geo. 3, c. 146.	(Parochial Registers Act, 1812)—	
	s. 1	334, 340
	s. 2	485
	s. 5	334
	Sched. C.	340
	Sched. D.	485
56 Geo. 3, c. 141.	(Burial Ground Act, 1816)	324
57 Geo. 3, c. xxix.	(Metropolitan Paving Act, 1817)—	
	s. 65	182
	s. 109	464
58 Geo. 3, c. 45.	(Church Building Act, 1818)	324
3 Geo. 4, c. 72.	(Church Building Act, 1822)—	
	s. 2	324
	s. 28	324
	(London Bread Act, 1822)	228, 230
c. cvi.	(Burials (Felo de se) Act, 1823)	312
4 Geo. 4, c. 52.	(Vagrancy Act, 1824)	32, 34, 440
5 Geo. 4, c. 83.	s. 3	34, 418, 447
	s. 4	34, 418
	s. 10	34
7 & 8 Geo. 4, c. lxxv.	(Regulation of the Watermen and Lightermen on the River Thames, between Yanlet Creek and Windsor Act, 1827), s. 57	367
10 Geo. 4, c. 44.	(Metropolitan Police Act, 1829)	67
11 Geo. 4, & 1 Will. 4, c. 66.	(Forgery Act, 1830), s. 21	334
1 & 2 Will. 4, c. 22.	(London Hackney Carriage Act, 1831), s. 4	8
2 & 3 Will. 4, c. 75.	(Anatomy Act, 1832)—	
	s. 7	311
	s. 8	311
4 & 5 Will. 4, c. 96.	(Bayswater Sewer Act, 1834), s. 26	37
5 & 6 Will. 4, c. 50.	(Highway Act, 1835)	176, 243, 247, 460
	ss. 6-18	176
	s. 21	243, 246, 247
	s. 22	243, 258
	s. 46	176
	s. 48	176
	s. 67	244
	s. 72	55, 461
	s. 75	461
	s. 78	56
	s. 79	56

5 & 6 Will. 4, c. 50.	(Highway Act, 1835)— <i>continued</i> .	176
c. 76.	s. 85	185
6 & 7 Will. 4, c. 37.	(Municipal Corporations Act, 1835)	228, 230
c. 86.	(Bread Act, 1836)	77
7 Will. 4 & 1 Vict. c. 83.	(Births and Deaths Registration Act, 1836)	75
	(Parliamentary Documents Deposit Act, 1837)—	75
	s. 1	75
	s. 2	463
2 & 3 Vict. c. 47.	(Metropolitan Police Act, 1839)—	463
	s. 51	59
	s. 54	29
	(10)	197
c. 71.	(Metropolitan Police Courts Act, 1839)	198
c. 93.	(County Police Act, 1839)—	487
	s. 13	255
	s. 14	185
3 & 4 Vict. c. 61.	(Beerhouse Act, 1840), s. 1	190
c. 88.	(County Police Act, 1840)—	324
	s. 1	28
	s. 14	8
	s. 19	30
4 & 5 Vict. c. 38.	(School Sites Act, 1841)	22
5 & 6 Vict. c. 9.	(Public Works Loans Act, 1842)	23, 24
6 & 7 Vict. c. 86.	(London Hackney Carriages Act, 1843), s. 2	27
7 & 8 Vict. c. 101.	(Poor Law Amendment Act, 1844), s. 60	23
8 & 9 Vict. c. 16.	(Companies Clauses Consolidation Act, 1845)	23
	s. 1	27
	ss. 38—55	23
	ss. 124—127	24
	ss. 142—145	28, 24
	s. 146	24
	s. 147	24
	s. 150	24
	s. 151	24
	s. 152	24, 25
	s. 154	23, 24
	s. 156	24
	s. 158	24
	s. 159	24, 25
	s. 160	24, 25
c. 18.	(Lands Clauses Consolidation Act, 1845)	16, 24,
		28, 36
	s. 1	24
	s. 92	36
	ss. 127—131	17
	s. 132	17, 325
	s. 136	24
	s. 138	24
	s. 139	24, 25
	s. 145	24
	s. 146	24, 25
	s. 147	24, 25
	s. 148	24, 28
	s. 150	17
	s. 151	17
c. 20.	(Railways Clauses Consolidation Act, 1845)	251,
		252, 393
	ss. 46—51	251, 258
	s. 108	368
	s. 109	368
	ss. 140—160	482
c. 28.	(Canal Tolls Act, 1845)	392
c. 99.	(Crown Lands Act, 1845)	143
c. 100.	(Lunacy Act, 1845)	121
c. 109.	(Gaming Act, 1845)	59
	ss. 10—14	60
	s. 20	60

	PAGE
8 & 9 Vict. c. 109.	(Gaming Act, 1845)— <i>continued</i> .
	Sched. III. 60
9 & 10 Vict. c. 74.	(Baths and Washhouses Act, 1846) 12, 15, 16, 17, 22, 24, 26, 27, 28, 226
	s. 1 14
	s. 2 21
	s. 3 14
	s. 4 26
	s. 5 13, 14
	ss. 7—11 15
	s. 12 15, 21
	ss. 13—15 15
	s. 16 26
	s. 19 15
	s. 21 15, 27
	s. 22 28
	s. 23 15, 22, 23, 24, 27
	s. 24 15, 16
	s. 25 18, 19
	s. 26 15, 18
	s. 27 17, 18
	s. 28 20
	s. 30 23
	s. 31 15
	s. 32 26
	s. 34 22, 23, 25, 378
	s. 35 23
	s. 36 19, 28
	s. 38 25
	s. 40 25
	Sched. 22
10 & 11 Vict. c. 14.	(Markets and Fairs Clauses Act, 1847), s. 42 364
c. 15.	(Gasworks Clauses Act, 1847) 237
	ss. 6—9 233, 235, 237
	s. 10 233, 237, 238, 239
	s. 11 233, 237, 238, 239
	s. 12 233, 237, 239
c. 17.	(Waterworks Clauses Act, 1847) 232
	s. 3 21
	ss. 28—31 232, 233, 235
	s. 32 232, 233, 235, 238, 239
	s. 33 232, 233, 235, 238
	s. 34 232, 233, 235, 239
	s. 37 20, 21
	ss. 44—47 236
	s. 48 238
	s. 49 238
	s. 52 238
	s. 61 11
c. 34.	(Towns Improvement Clauses Act, 1847) 13
	s. 1 13
	s. 7 175
	s. 9 176
	s. 38 305
	s. 57 305
	s. 66 291
	s. 73 294
	s. 75 287
	s. 80 58, 288, 307
	s. 81 288
	s. 82 288
	s. 121 21
	s. 128 364
	ss. 136—141 13
	s. 202 364
c. 61.	(Baths and Washhouses Act, 1847) 12, 16, 27, 28
	s. 4 16, 24, 28
	s. 5 20, 28

10 & 11 Vict. c. 61.

(Baths and Washhouses Act, 1847)—*continued*.

s. 7 19, 25

Sched. 19, 20, 25

c. 65.

(Cemeteries Clauses Act, 1847) . . . 311, 314, 317, 468,
470, 471, 473, 474, 475, 479, 481, 482, 483

s. 1 479

s. 9 472

s. 10 471, 479

s. 11 473, 475

ss. 12—14 475, 479

s. 15 479

s. 16 475, 479

s. 17 475

s. 18 475, 479

s. 19 475

ss. 20—22 475, 479

s. 23 480

s. 24 480

s. 25 473, 479

s. 26 480

s. 27 318, 471, 478, 480

s. 28 318, 480

ss. 29—31 318

s. 32 338

s. 34 478, 480

s. 35 480

s. 37 478, 481

s. 38 476

s. 39 473

s. 40 350, 477

s. 41 337, 476

s. 43 481

s. 47 481

s. 49 481

s. 50 481

s. 51 478

ss. 52—57 481

s. 58 478, 482

s. 59 478, 482

s. 62 482

Sched. 477, 481

c. 69.

(House of Commons Costs Taxation Act, 1847) . . . 87

c. 89.

(Town Police Clauses Act, 1847) . . . 8, 184, 192

s. 4 461

s. 6 184

s. 7 184, 190

s. 8 184

s. 9 184

s. 10 184, 197

s. 11 184, 198

s. 12 184

s. 13 184

s. 14 184, 193

s. 15 184, 192

s. 16 184

s. 17 184, 192

s. 18 184

s. 19 184

s. 20 184, 192, 193

s. 21 194, 462

s. 22 462

s. 23 462

ss. 24—27 461, 462

s. 28 56, 461, 462

s. 29 462

s. 38 6, 8

s. 68 6, 364

s. 69 9, 10, 364

		PAGE
10 & 11 Vict. c. 109.	(Poor Law Board Act, 1847)	14
11 & 12 Vict. c. 43.	(Summary Jurisdiction Act, 1848)—	
	s. 11	374
	s. 19	374
c. 63.	(Public Health Act, 1848)	364, 464
	s. 67	464
12 & 13 Vict. c. 45.	(Quarter Sessions Act, 1849) (Baines' Act), s. 11	432
c. 49.	(School Sites Act, 1849)	324
13 & 14 Vict. c. 7.	(London Hackney Carriages Act, 1850), s. 4	384
15 & 16 Vict. c. 85.	(Burial Act, 1852)	226, 309, 311, 314, 315, 316, 317, 320, 328, 350, 351, 468, 470, 483
	s. 2	324
	s. 3	324
	s. 9	469
	s. 10	320, 321, 322, 323
	s. 11	320, 322
	s. 14	322
	s. 15	483, 484
	s. 19	327
	s. 20	327, 329
	s. 23	320
	ss. 24—27	325
	s. 28	325, 328
	s. 30	335
	s. 32	478
	s. 33	340
	s. 34	315, 340, 350
	s. 44	335
	Sched. B.	336
16 & 17 Vict. c. 41.	(Common Lodging Houses Act, 1853), s. 8	34
c. 134.	(Burial Act, 1853)	315, 316, 327
	s. 1	321
	s. 7	317, 327
	s. 8	338
	s. 43	318
c. 137.	(Charitable Trusts Act, 1853)	138
17 & 18 Vict. c. 87.	(Burial Act, 1854)	316, 328
	s. 1	316, 327, 329
	s. 2	316, 328
	s. 4	316
	s. 5	316
	s. 6	316, 328
	s. 7	328
	s. 9	328
	s. 11	328
18 & 19 Vict. c. 120.	(Metropolis Management Act, 1855)	67, 212, 223, 224
	s. 62	181
	s. 64	181
	s. 76	181
	s. 96	231, 261
	s. 119	182
	s. 138	376
	s. 144	87
	s. 183	224
	s. 202	376, 377, 378
c. 121.	(Nuisances Removal Act for England, 1855), s. 8	259
c. 128.	(Burial Act, 1855)	316
	s. 3	322
	s. 4	322
	s. 6	325
	s. 7	315, 340, 349
	s. 8	335
	s. 9	326, 471
	s. 11	320
	s. 12	320
	s. 15	326, 479
	s. 17	326, 328, 330

		PAGE
19 & 20 Vict. c. 69.	(County and Borough Police Act, 1856)	184
	s. 5	185
	s. 7	193
	s. 15	188
c. 112.	(Metropolis Management Amendment Act, 1856),	
	s. 10	87
c. xvii.	(Cambridge Award Act, 1856)	385
	s. 11	386
	s. 51	385
20 & 21 Vict. c. 35.	(City of London Burial Act, 1857)	318
c. 43.	(Summary Jurisdiction Act, 1857)	424, 426
	s. 2	423, 424, 427
	s. 3	426, 431
	s. 4	425
	s. 5	425
	s. 6	430
	s. 7	429
	s. 8	430
	s. 13	426
	s. 14	425
c. 81.	(Burial Act, 1857)	316
	s. 3	315, 325
	s. 4	316, 329
	s. 5	320, 478
	s. 6	347
	s. 8	326
	s. 9	321
	s. 10	336
	s. 11	327
	s. 12	327
	s. 15	335
	s. 20	327
	s. 21	327
	s. 23	336
	s. 25	310, 341
c. xxi.	(Islington Parish Act, 1857), s. 3	463
21 & 22 Vict. c. 98.	(Local Government Act, 1858)	364
	s. 49	316, 329
22 Vict. c. 1.	(Burial Act, 1859)	316
	s. 1	336
22 & 23 Vict. c. 32.	(County and Borough Police Act, 1859)	184
	s. 2	191
	s. 4	197
	s. 26	196
c. xx.	(Mersey Docks (Money) Act, 1859), s. 5	216
23 & 24 Vict. c. 27.	(Refreshment Houses Act, 1860), s. 8	487
c. 32.	(Ecclesiastical Courts Jurisdiction Act, 1860)	334
c. 51.	(Local Taxation Returns Act, 1860)	162
c. 64.	(Burial Act, 1860)	316
	s. 4	321
c. 112.	(Defence Act, 1860)	37
	s. 18	37
24 & 25 Vict. c. 47.	(Harbours and Passing Tolls, etc. Act, 1861)	141
	s. 65	141
c. 70.	(Locomotive Act, 1861)—	
	s. 6	249
	s. 7	249
c. 97.	(Malicious Damage Act, 1861), s. 33	258
c. 98.	(Forgery Act, 1861), s. 36	335
25 & 26 Vict. c. 61.	(Highway Act, 1862), s. 34	247
c. 100.	(Burial Act, 1862)	328
c. 102.	(Metropolis Management Amendment Act, 1862)—	
	s. 63	181
	s. 72	260
	s. 83	376
	s. 90	59

TABLE OF STATUTES

li

		PAGE
26 & 27 Vict. c. 112.	(Telegraph Act, 1863)	261
	s. 9	234
	s. 10	234
	ss. 17—20	234
	s. 32	394
	s. 33	394
27 & 28 Vict. c. 97.	(Registration of Burials Act, 1864)	324, 482
	s. 1	336, 338
	s. 7	338
c. 101.	(Highway Act, 1864)	460
	s. 25	460, 461
c. 114.	(Improvement of Land Act, 1864)	457
28 & 29 Vict. c. 90.	(Metropolitan Fire Brigade Act, 1865)	375
	s. 28	377
29 & 30 Vict. c. 62.	(Crown Lands Act, 1866)	143
	s. 7	143
	s. 8	143
c. 90.	(Sanitary Act, 1866), s. 44	316, 328, 329
30 & 31 Vict. c. 133.	(Consecration of Churchyards Act, 1867)	324
c. 134.	(Metropolitan Streets Act, 1867)—	
	s. 3	463
	s. 7	463
	s. 23	55
31 & 32 Vict. c. 24.	(Capital Punishment Amendment Act, 1868), s. 6	312
c. 37.	(Documentary Evidence Act, 1868)	451
c. 47.	(Consecration of Churchyards Act, 1868)	324
c. 72.	(Promissory Oaths Act, 1868), s. 12	195
c. 122.	(Poor Law Amendment Act, 1868), s. 27	31
c. lxxx.	(Metropolis Subways Act, 1868), s. 10	376
32 & 33 Vict. c. 67.	(Valuation (Metropolis) Act, 1869), s. 40	435
c. 73.	(Telegraph Act, 1869), s. 5	234
c. 102.	(Metropolitan Board of Works (Loans) Act, 1869)	223
c. 110.	(Charitable Trusts Act, 1869)	138
33 & 34 Vict. c. 23.	(Forfeiture Act, 1870), s. 2	166
c. 70.	(Gas and Water Works Facilities Act, 1870)	142
c. 73.	(Annual Turnpike Acts Continuance Act, 1870),	
	s. 12	247
c. 75.	(Elementary Education Act, 1870)—	
	s. 75	138
	s. 78	138
c. 77.	(Juries Act, 1870), s. 6	487
c. 78.	(Tramways Act, 1870)	203, 209, 375
	s. 3	236
	s. 4	233
	s. 5	233
	s. 26	236, 251
	s. 27	239, 251
	s. 28	251
	s. 30	236, 238
	s. 31	237
	s. 32	237
	s. 33	239
	s. 46	377
	s. 48	364
34 & 35 Vict. c. 33.	(Burial Act, 1871)	316
	s. 1	321
c. 70.	(Local Government Board Act, 1871)—	
	s. 2	13, 14
	Sched.	13, 14
35 & 36 Vict. c. 33.	(Ballot Act, 1872), Sched. I.	119
c. 79.	(Public Health Act, 1872), s. 34	13
c. 91.	(Borough Funds Act, 1872)	68, 87, 88
	s. 4	83
c. 94.	(Licensing Act, 1872)—	
	s. 46	487
	s. 75	60
36 & 37 Vict. c. 48.	(Regulation of Railways Act, 1873)	392
	s. 3	392

	PAGE
36 & 37 Vict. c. 50.	(Places of Worship Sites Act, 1873) . . . 324
37 & 38 Vict. c. 88.	(Births and Deaths Registration Act, 1874)—
	s. 10 342
	s. 15 344
	s. 18 313
	s. 20 343
38 & 39 Vict. c. 17.	(Explosives Act, 1875) 194
c. 55.	(Public Health Act, 1875) 9, 10, 11, 15, 16, 23, 27, 32, 34, 37, 56, 180, 233, 238, 240, 252, 259, 291, 292, 299, 301, 306, 359, 360, 361, 362, 364, 373, 374, 384, 395, 396, 397, 464, 465, 469, 470, 471, 484
	s. 4 16, 27, 243, 292
	s. 6 14, 385
	s. 10 13, 14, 15, 16
	s. 16 177, 232
	s. 17 395
	s. 26 294
	s. 32 232, 469
	s. 33 232, 469
	s. 34 469
	s. 35 289
	s. 36 177, 289, 305
	s. 38 177, 289
	s. 41 305
	s. 44 361
	s. 51 20
	s. 52 20
	s. 54 232
	s. 57 232, 238
	s. 62 177
	s. 65 20
	ss. 71—73 464, 465
	s. 74 464
	s. 75 464, 465
	s. 80 361
	s. 83 32, 34
	s. 86 32
	s. 90 361
	s. 91 259
	s. 113 361
	ss. 120—125 389
	s. 131 93
	s. 141 361, 469, 476
	s. 142 469
	s. 144 176, 177, 243, 245
	s. 147 243, 248, 394
	s. 148 248
	s. 149 231
	s. 150 179, 368, 397
	s. 153 240
	s. 154 42, 47, 48
	s. 155 290, 291, 293
	s. 157 282, 283, 284, 290, 293, 299, 301, 302, 304, 361, 368, 396
	s. 158 284, 300, 304, 306
	s. 159 282, 303
	s. 160 287, 288, 291, 294, 307
	s. 161 233
	s. 164 361, 367
	s. 169 361
	s. 171 6, 9, 56, 184, 195, 361, 462
	s. 172 361
	s. 175 16
	s. 176 16, 47, 471
	s. 179 291
	s. 181 291
	s. 182 10, 301, 362
	s. 183 10, 11, 301, 362, 373

38 & 39 Vict. c. 55.

(Public Health Act, 1875)—*continued*.

PAGE

	s. 184	10, 301, 362, 364, 476
	s. 185	10, 301, 362, 363
	s. 186	10, 301, 362, 373
	s. 187	361, 375, 377
	s. 188	384
	s. 189	176, 177, 483
	s. 190	483
	s. 193	179, 180
	s. 211 (4)	470
	s. 213	37
	s. 229	470
	s. 233	16, 27
	s. 234	212
	(4)	216
	s. 235	204, 206
	s. 243	28
	s. 251	293, 374, 424
	s. 253	374
	s. 254	374
	s. 269	296
	s. 276	6, 9, 195, 291, 462
	s. 299	395
	s. 308	232, 240, 252, 395
	s. 314	361
	s. 326	306
	s. 327	395, 396, 397
	(3)	395
	s. 328	397
	s. 329	397
	s. 331	395
	s. 332	397
	s. 341	374
	s. 343	13, 316
	Sched. V.	13, 316, 328, 329, 364
c. 66.	(Statute Law Revision Act, 1875)	14, 25, 28
c. 83.	(Local Loans Act, 1875)	152, 211, 224
	s. 4	327
	s. 5	152
	s. 8	152
	s. 31	327
	s. 34	327
c. 89.	(Public Works Loans Act, 1875)	28
	s. 9	28
	s. 55	28
	s. 57	28
	Sched. I.	28
39 & 40 Vict. c. 56.	(Commons Act, 1876), s. 8	487
c. 59.	(Appellate Jurisdiction Act, 1876), s. 17	431
40 & 41 Vict. c. 31.	(Limited Owners Reservoirs and Water Supply Further Facilities Act, 1877), s. 6	21
c. 60.	(Canal Boats Act, 1877)	387, 390
	s. 1	388
	s. 3	388, 389
	s. 4	389
	s. 5	390
	s. 6	390
	s. 7	388, 391
	s. 11	391
	s. 12	390
	s. 14	387, 388, 390, 391
c. 66.	(Local Taxation Returns Act, 1877)	162
c. viii.	(Metropolitan Board of Works Act, 1877)	375, 377
41 & 42 Vict. c. 14.	(Baths and Washhouses Act, 1878)	12
	s. 2	12
	s. 3	18, 19, 22, 25
	s. 4	19, 25
	s. 9	13, 27, 28

	PAGE
41 & 42 Vict. c. 14.	(Baths and Washhouses Act, 1878)— <i>continued</i> .
	s. 10 25
	s. 11 25
	s. 14 25
	Sched. 25
c. 15.	(Customs and Inland Revenue Act, 1878), s. 21 . 118
c. 32.	(Metropolis Management and Building Acts Amendment Act, 1878), s. 12 . 377
c. 42.	(Tithe Act, 1878) 17
	ss. 1—3 17
	s. 5 17
	s. 6 17
c. 49.	(Weights and Measures Act, 1878) 230
	ss. 4—9 142
c. 76.	(Telegraph Act, 1878)—
	s. 3 234, 394
	s. 4 234, 394
	s. 5 234
	s. 7 261
c. 77.	(Highways and Locomotives (Amendment) Act, 1878) 375
	s. 21 243
	s. 26 377
	s. 27 231
42 & 43 Vict. c. 6.	(District Auditors Act, 1879) 156
	s. 5 156
c. 17.	(House of Commons Costs Taxation Act, 1879) . 87
c. 31.	(Public Health (Interments) Act, 1879) . 309, 312, 313, 314, 315, 317, 318, 320, 321, 323, 338, 350, 468, 469, 470, 471, 473, 474, 475, 476, 478, 479, 480, 482, 483
	s. 2 469
	(2) 471
	(3) 469
	s. 3 470
c. 49.	(Summary Jurisdiction Act, 1879) 424
	s. 4 34
	s. 6 431
	s. 20 34
	(7) 34
	s. 33 423, 424, 425
	s. 35 106, 431
	s. 40 432
c. 64.	(Artizans and Labourers Dwellings Act (1868), Amendment Act, 1879), s. 7 38
43 & 44 Vict. c. 20.	(Inland Revenue Act, 1880), s. 47 60
c. 37.	(Census Act, 1880) 486
c. 41.	(Burial Laws Amendment Act, 1880) . 309, 312, 316, 469, 480
	s. 1 480
	s. 10 334, 338
	s. 13 309
	Sched. B. 338
44 & 45 Vict. c. 58.	(Army Act, 1881)—
	s. 143 255
	s. 146 168
	s. 181 (5) 168
c. xciii.	(Metropolitan Bridges Act, 1881)—
	s. 17 260
	s. 29 260
45 & 46 Vict. c. 9.	(Documentary Evidence Act, 1882) 451
c. 19.	(Interments (felo de se) Act, 1882) 312
c. 21.	(Places of Worship Sites Amendment Act, 1882) . 324
c. 22.	(Boiler Explosions Act, 1882) 143
c. 30.	(Baths and Wash Houses Act, 1882) 12
	s. 1 12
	s. 2 17
c. 38.	(Settled Land Act, 1882), s. 48 17

		PAGE
45 & 46 Vict. c. 48.	(Reserve Forces Act, 1882), s. 23 (1)	255
c. 50.	(Municipal Corporations Act, 1882)	55, 162, 164, 174, 185, 192, 193, 196, 438, 439
	s. 12	171
	s. 22 (3)	171
	s. 23	10, 54, 55, 58, 361, 362, 366, 368, 375, 376, 377, 462
	s. 24	373, 375
	s. 26	160
	s. 34	173
	s. 36	173
	s. 39	165
	(1)	174
	s. 40	439
	s. 66	439
	s. 87	168
	s. 88 (4)	168
	s. 119	243, 245
	s. 140	188
	s. 144 (1)	267
	s. 191	195
	(1)	189
	(2)	191, 193
	(3)	188, 193, 196
	(4)	196, 197
	s. 192	188
	s. 193	192
	s. 194	196
	s. 195	192
	(5)	197, 198
	s. 197	188
	s. 215	185
	s. 227	192
	s. 247	366
	s. 253	172
	s. 257 (2)	386
	Sched. II.	175, 360
	Sched. V.	188
c. 54.	(Artizans Dwellings Act, 1882), s. 8 (8)	38
c. 56.	(Electric Lighting Act, 1882)	141, 226
	s. 4	234
	s. 6	377, 378
	s. 12	237
	s. 13	237
	s. 16	399
c. lvi.	(Metropolitan Board of Works (Various Powers) Act, 1882)	375, 377
	s. 41	260
	s. 45	377
46 & 47 Vict. c. 44.	(Borough Constables Act, 1883)	193
c. 51.	(Corrupt and Illegal Practices Prevention Act 1883)	166
c. 52.	(Bankruptcy Act, 1883)—	
	s. 32	165
	s. 122	165
c. clxxvii.	(Metropolitan Board of Works (Bridges, etc.) Act, 1883)—	
	s. 26	260
	s. 27	260
47 & 48 Vict. c. 12.	(Public Health (Confirmation of Byelaws) Act, 1884)	10, 364
	s. 2	364
	s. 3	364
c. 43.	(Summary Jurisdiction Act, 1884)	24
	s. 4	24
	(3)	24
	s. 5	24
	Sched.	24

		PAGE
47 & 48 Vict. c. 65.	(New Parishes Acts and Church Building Acts, Amendment Act, 1884)	324
c. 70.	(Municipal Elections (Corrupt and Illegal Practices) Act, 1884)—	
	s. 2	166
	s. 3 (2)	166
	s. 8 (2)	166
c. 72.	(Disused Burial Grounds Act, 1884)	473
c. 75.	(Canal Boats Act, 1884)	387
	s. 1	388
	s. 2	390
	s. 3	390
	s. 4	390, 391
	s. 5	390
	s. 6	390
	s. 7	389
	s. 8	391
	s. 9	390
	s. 10	387
48 & 49 Vict. c. 21.	(Burial Boards (Contested Elections) Act, 1885)	322
c. 32.	(Tithe Rentcharge Redemption Act, 1885), s. 2	17
c. 35.	(Public Health (Ships, etc.) Act, 1885)	389
c. 50.	(Metropolitan Board of Works (Money) Act, 1885), s. 16	217
c. clxvii.	(Metropolitan Board of Works (Various Powers) Act, 1885)	375, 377
49 & 50 Vict. c. 20.	(Burial of Drowned Persons Act, 1886)	312
c. 38.	(Riot (Damages) Act, 1886)	188
50 & 51 Vict. c. 32.	(Open Spaces Act, 1887), s. 4	473
c. clxxii.	(Thames Tunnel (Blackwall) Act, 1887)	375
51 & 52 Vict. c. 25.	(Railway and Canal Traffic Act, 1888)	392
	s. 7	393
	s. 40	393
	s. 45	393
	(7)	393
c. 41.	(Local Government Act, 1888)	55, 223, 438, 439
	s. 3 (viii)	243, 260
	s. 6	243, 394
	s. 11 (1)	243
	s. 16	10, 54, 55, 58, 361, 362, 369, 375, 376, 377
	s. 34 (2)	243
	s. 35 (2)	245
	s. 39	185
	s. 52	385
	s. 74	268
	s. 75	438
	s. 81	185
	s. 85 (1)	55
	s. 88	439
c. 52.	(Public Health (Buildings in Streets) Act, 1888)	291, 292
	s. 2	292
	s. 3	292, 293
52 & 53 Vict. c. 21.	(Weights and Measures Act, 1889)—	
	s. 1	377
	s. 28	142, 377
	s. 35	229
c. 27.	(Advertising Stations (Rating) Act, 1889)—	
	s. 2	58
	s. 5	58
c. 30.	(Board of Agriculture Act, 1889)—	
	s. 2 (1)	17
	Sched. I.	17
c. 49.	(Arbitration Act, 1889)	254
c. 63.	(Interpretation Act, 1889)—	
	s. 3	25
	s. 12 (8)	141
	s. 13 (11)	424

	PAGE
52 & 53 Vict. c. 63.	(Interpretation Act, 1889)— <i>continued</i> .
	s. 13 (12) 424
	s. 31 372
	s. 38 (2) 363
c. 69.	(Public Bodies Corrupt Practices Act, 1889) . . . 166
c. 72.	(Infectious Disease (Notification) Act, 1889), s. 13 . 390
c. cxvi.	(Local Government Board's Provisional Orders Confirmation (No. 15) Act, 1889) . . . 385
53 Vict. c. 5.	(Lunacy Act, 1890) 121, 122, 123
	s. 34 124
	(2) 125
	s. 38 124
	(6) (a) 125
	s. 39 124
	(7) 125
	(9) 125
	s. 40 125
	s. 41 124
	s. 46 127
	s. 49 125
	s. 59 127
	s. 72 (3) 125
	s. 75 125
	s. 76 125
	s. 162 123
	s. 187 (1) 124
	s. 191 124
	s. 198 124
	s. 203 124
	s. 205 126
	s. 206 126
	s. 208 129
	s. 226 127
	s. 231 126
	(5) 127
	s. 254 (2) 126
	s. 275 (1) 127
	s. 315 126
	s. 332 125
	s. 338 (1) 123
	Sched. III. 129
53 & 54 Vict. c. 34.	(Infectious Disease (Prevention) Act, 1890), s. 8 . 314
c. 35.	(Boiler Explosions Act, 1890) 144
c. 45.	(Police Act, 1890) 433
	s. 11 433
	s. 25 191
c. 59.	(Public Health Acts Amendment Act, 1890) . . . 288,
	299, 306, 307, 383, 396
	s. 2 283
	s. 3 283
	s. 5 283, 288, 289, 300
	s. 11 289
	s. 13 362
	s. 22 289
	s. 23 283
	(1) 283, 299
	(2) 283, 299
	(3) 299, 300
	(4) 283, 306
	s. 33 306
	s. 34 58, 288, 307
	s. 36 287, 288
	(2) 288
	(3) 288
	(6) 288
	s. 37 289
	s. 38 368
	s. 40 383, 384

	PAGE
53 & 54 Vict. c. 59.	(Public Health Acts Amendment Act, 1890)—
	<i>continued.</i>
	s. 40 (1) 383
	(2) 384
	s. 51 20
c. 66.	(Metropolis Management Amendment Act, 1890),
	s. 6 181
c. 70.	(Housing of the Working Classes Act, 1890) 45
c. 71.	(Bankruptcy Act, 1890), s. 9 165
c. cxliii.	(London Council (General Powers) Act, 1890)—
	s. 14 59, 377
	ss. 15—20 377
	Sched. B. 59
54 & 55 Vict. c. 39.	(Stamp Act, 1891) 62
	s. 1 334
	s. 64 334
	s. 115 147, 148
	Sched. 334
c. 40.	(Brine Pumping (Compensation for Subsidence)
	Act, 1891) 262, 263
	s. 3 263
	s. 11 263
	s. 21 263
	s. 22 264, 265
	s. 23 264
	(1) 264
	s. 24 264
	ss. 27—29 264
	s. 30 265
	ss. 31—33 264
	s. 38 263
	s. 41 265
	s. 44 265
	s. 50 263, 264
c. 63.	(Highways and Bridges Act, 1891), s. 3 248, 255,
	382
c. 65.	(Lunacy Act, 1891) 121
	s. 7 124
	s. 16 126
c. 76.	(Public Health (London) Act, 1891) 67, 183, 203,
	226, 375, 376, 466
	s. 16 377, 378
	(1) 183
	(2) 183
	s. 17 (1) (b) 464
	s. 19 377
	s. 28 377
	s. 39 377, 378
	s. 44 (2) 231
	s. 45 378
	s. 50 378
	s. 51 181
	s. 66 378
	s. 75 93, 95
	s. 88 378
	s. 95 378
	s. 96 466
	(3) 466
	s. 99 5
	s. 105 (2) 226
c. lxxvii.	(London Overhead Wires Act, 1891) 182
55 & 56 Vict. c. 19.	(Statute Law Revision Act, 1892) 34
c. 53.	(Public Libraries Act, 1892) 226
c. 57.	(Private Street Works Act, 1892) 179, 368
	s. 22 397
c. 59.	(Telegraph Act, 1892)—
	s. 3 234
	s. 5 234

		PAGE
55 & 56 Vict. c. cxxx.	(London Water Act, 1892)	88
c. cxxxviii.	(London County Council (General Powers) Act, 1892)	377
	s. 40	260
56 & 57 Vict. c. 10.	(Police Act, 1893)	194
c. 32.	(Barbed Wire Act, 1893)	4
	ss. 2—4	5
c. 47.	(Public Health (London) Act, 1891, Amendment Act, 1893)	226
c. 73.	(Local Government Act, 1894)	316, 317, 320, 322, 323, 331, 332
	s. 7	320
	(1)	14, 317, 322
	(2)	14
	(3)	17, 21, 26
	(4)	323
	(5)	15, 329
	(7)	15, 317, 323, 329
	(8)	317
	s. 8 (1) (e)	21
	(i)	21
	s. 12	27
	(3)	331
	s. 19 (4)	17
	s. 21	253, 331
	s. 25	176, 243
	(1)	243, 394
	(2)	247
	s. 46	168
	(1) (c)	166
	(6)	174
	s. 48 (4)	439
	(b)	438
	s. 53	317, 331
	(2)	331, 332
	s. 62	316, 322, 328, 329
	(2)	321
	s. 67	317
c. ccii.	(London County Council (Subways) Act, 1893)	375, 376
c. ccxxi.	(London County Council (General Powers) Act, 1893)	226
57 & 58 Vict. c. 15.	(Music and Dancing Licenses (Middlesex) Act, 1894)	20
c. 53.	(London (Equalisation of Rates) Act, 1894), s. 3	489
c. 60.	(Merchant Shipping Act, 1894)	375
	s. 214	376, 377
	s. 634	412
	s. 713	143
	s. 714	143
c. lx.	(Cambridge University and Corporation Act, 1894)—	
	s. 7	386
	s. 9	386
	s. 10	386
c. ccxiii.	(London Building Act, 1894)	67
c. ccix.	(Manchester Corporation Act, 1894)	39, 40
58 & 59 Vict. c. 9.	(Documentary Evidence Act, 1895)	451
c. 39.	(Summary Jurisdiction (Married Women) Act, 1895)	194
c. cxxx.	(London County Council (Tower Bridge Southern Approach) Act, 1895)	39, 40
59 & 60 Vict. c. 48.	(Light Railways Act, 1896)	43, 203, 233, 252
	s. 1	43
	s. 3	234
	s. 12	43
	(1)	252
	s. 13 (1)	43
	s. 28	252

		PAGE
59 & 60 Vict. c. 59.	(Baths and Washhouses Act, 1896)	12, 226
c. iv.	(Brine Pumping (Compensation for Subsidence) Provisional Order Confirmation Act, 1896)	263
	Sched.	263
60 & 61 Vict. c. 24	(Finance Act, 1897), s. 8	62
c. 40.	(Local Government (Joint Committees) Act, 1897)	317, 331
	s. 1 (1) (c)	332
c. cxxxiii.	(City of London Sewers Act, 1897)	5
c. cexxiv.	(Thames Tunnel (Greenwich to Millwall) Act, 1897)	375
c. cexlii.	(London County Council (Improvements) Act, 1897)	39
61 & 62 Vict. c. 16.	(Canals Protection (London) Act, 1898)	399
c. 22.	(Statute Law Revision Act, 1898)	24
c. 29.	(Locomotives Act, 1898), ss. 6—8	249
62 & 63 Vict. c. 9.	(Finance Act, 1899), s. 8	147, 148
c. 14.	(London Government Act, 1899)	67, 224
	s. 2 (4)	438
	(5)	438, 439
	s. 4	5
	(1)	224
	s. 5 (2)	376
	s. 6 (2)	260
	(6)	88
	s. 8 (3)	269
	Sched. II.	376
c. 19.	(Electric Lighting (Clauses) Act, 1899)	237, 239
	Sched.	399
	s. 7	409
	s. 12	237
	s. 14	237
	s. 15	237, 399
	s. 16	237
	s. 17	238
	s. 19	399
c. 29.	(Baths and Washhouses Act, 1899)	12
	s. 2	20
c. 33.	(Board of Education Act, 1899)	130, 131
	s. 1 (1)	130
	(2)	130
	(4)	130
	s. 2 (2)	138
	s. 4	131
	s. 7 (1)	131
	(3)	131
c. 44.	(Small Dwellings Acquisition Act, 1899)	226
c. cclxvi.	(London County Council (Improvements) Act, 1899)	40
63 & 64 Vict. c. 15.	(Burial Act, 1900)	314, 316, 317, 470
	s. 1	315
	(1)	326
	(2)	326
	s. 2	315, 473
	(1)	471
	(2)	471
	(4)	471, 473
	s. 3	315, 340, 478
	(1)	478
	(5)	478
	s. 4	322, 323, 325, 335, 340
	s. 5	336
	s. 6	326, 473
	s. 7	471, 478, 480
	s. 9	338
	s. 10	479
	s. 11	314, 470
	s. 12	315, 327

		PAGE
63 & 64 Vict. c. cxxix.	(Thames Tunnel (Rotherhithe and Ratcliff) Act, 1900)	375
c. cxxviii.	(City of London (Various Powers) Act, 1900)—	
	s. 51	262
	s. 52	262
c. cclxii.	(Coventry Corporation Act, 1900), s. 108	149
1 Edw. 7, c. 19.	(Public Libraries Act, 1901), s. 3	378
c. 22.	(Factory and Workshop Act, 1901)	301
	s. 14 (1)—(3)	285
	s. 15	285, 301
	s. 73	401
	s. 125	301
2 Edw. 7, c. 8.	(Cremation Act, 1902)	313, 315
	s. 11	350
c. 41.	(Metropolis Water Act, 1902)	88, 225
	s. 24 (1)	88
c. 42.	(Education Act, 1902)	131
	s. 13	138
c. clxxiii.	(London County Council (General Powers) Act, 1902), s. 53	377
3 Edw. 7, c. 9.	(County Councils (Bills in Parliament) Act, 1903)	87
	s. 1 (4)	88
c. 14.	(Borough Funds Act, 1903)	68, 70, 87, 88
c. 31.	(Board of Agriculture and Fisheries Act, 1903), s. 1 (1)	17
c. excii.	(Birmingham Corporation Act, 1903), s. 143	64
4 Edw. 7, c. 16.	(Public Health Act, 1904), s. 1	144
c. 28.	(Weights and Measures Act, 1904), s. 5	142
c. cexliv.	(London County Council (General Powers) Act, 1904), s. 49	182
6 Edw. 7, c. 25.	(Open Spaces Act, 1906)	226, 336, 375, 473
	s. 10	473
	s. 15	377, 378
c. 28.	(Crown Lands Act, 1906), s. 6	248
c. 33.	(Local Authorities (Treasury Powers) Act, 1906)	13
c. 43.	(Street Betting Act, 1906)	55
	s. 1 (1)—(4)	54
	s. 2	54
c. 44.	(Burial Act, 1906)	226, 309, 311, 314, 315, 316, 317, 320, 326, 328, 332, 350, 351, 468, 470, 471, 483
	s. 1	326
	s. 2	471, 479
c. 48.	(Merchant Shipping Act, 1906)—	
	s. 34	312
	s. 35	312
c. 49.	(Census of Production Act, 1906), s. 7	144
c. lxxxvii.	(Metropolitan Water Board Act, 1906)	225
7 Edw. 7, c. 9.	(Territorial and Reserve Forces Act, 1907), s. 28 (2)	255
c. 13.	(Finance Act, 1907), s. 10	147, 148
c. 17.	(Probation of Offenders Act, 1907)	106, 366
	s. 1	370
c. 21.	(Butter and Margarine Act, 1907), s. 8	357
c. 23.	(Criminal Appeal Act, 1907), s. 20	434
c. 27.	(Advertisements Regulation Act, 1907)	182, 362
	s. 7	487
c. 53.	(Public Health Acts Amendment Act, 1907)	10,
	283, 284, 396, 462	
	s. 3	9, 10
	s. 6	11, 373, 374
	s. 7	296
	(1) (b)	261
	s. 12	143
	s. 13	9, 10, 261
	s. 15	306
	s. 16	305
	s. 18	462
	s. 23	282, 300, 303, 306, 307
	s. 24	285, 300

		PAGE
7 Edw. 7, c. 53.	(Public Health Acts Amendment Act, 1907)— <i>continued.</i>	
	s. 27	281, 282
	s. 30	287
	s. 32	58, 288, 307
	s. 33	284, 396
	s. 47	231
	s. 61	390
	(3)	390
	s. 80	462
	s. 81	462
	s. 82 (4)	143
	s. 91 (3) (c)	396
	s. 92	9, 10
	s. 93	9
	s. 94 (4)	144
8 Edw. 7, c. 36.	(Small Holdings and Allotments Act, 1908)	209, 284
c. 40.	(Old Age Pensions Act, 1908)	109
c. 48.	(Post Office Act, 1908)—	
	s. 2 (1) (d)	118
	s. 79	255
c. 67.	(Children Act, 1908)	107, 412
9 Edw. 7, c. 30.	(Cinematograph Act, 1909)	19, 301, 424
	s. 2	20
	s. 7	20
	(2)	20
c. 34.	(Electric Lighting Act, 1909)	141
c. 44.	(Housing, Town Planning, etc., Act, 1909)	45, 287
	s. 43	286
c. 47.	(Development and Road Improvement Funds Act, 1909)	43, 45, 49, 248, 380, 381, 382
	s. 1	43, 381
	s. 3	43
	s. 5	381
	(1)—(3)	44
	s. 8	248, 379, 380
	(1)	44, 252, 256
	(b)	45
	(5)	44, 248, 256
	s. 9	380, 383
	s. 10 (1)	44
	s. 11	44, 381
	(1)	45, 381
	(5)	45
	s. 18	381
	s. 19	381
	(1) (b)	381
	(c)	381
	Sched.	44
10 Edw. 7, c. 8.	(Finance (1909–10) Act, 1910)—	
	s. 45	487
	Sched. I.	487
10 Edw. 7 & 1 Geo. 5, c. 24.	(Licensing (Consolidation) Act, 1910)—	
	s. 37	487
	s. 109	487
	Sched. V.	487
	c. 34. (Small Holdings Act, 1910)	284
	c. xxx. (City of London (Tithes and Rates) Act, 1910) (Municipal Elections (Corrupt and Illegal Practices) Act, 1911)	152
1 & 2 Geo. 5, c. 7.	(Protection of Animals Act, 1911), s. 7	166
c. 27.	(Telegraph (Construction) Act, 1911)	461
c. 39.	(Corporation of London (Bridges) Act, 1911)	252, 394
c. cxx.	(Shops Act, 1912), s. 13 (2)	152
2 Geo. 5, c. 3.	(Light Railways Act, 1912)	487
2 & 3 Geo. 5, c. 19.	(London County Council (Finance Consolidation) Act, 1912)	203, 233, 252
c. cv.	s. 35	65, 223, 225
		65

3 & 4 Geo. 5, c. 27.	(Forgery Act, 1913)—	
	s. 5 (2)	335
	s. 20	335
c. 28.	(Mental Deficiency Act, 1913)	100, 102, 103, 104, 107, 121, 122, 127, 422
	s. 2 (2)	103, 105
	s. 3	128
	s. 11	128
	s. 12	128
	s. 20	127
	s. 25	127
	(1) (g)	123
	(2)	128
	s. 27	102
	s. 30	127
	s. 31	100, 102
	(1)	102
	s. 34	102
	ss. 35—38	129
	s. 41	127, 129
	ss. 49—51	129
	s. 64	123
c. 32.	(Ancient Monuments Consolidation and Amend- ment Act, 1913), s. 18	286
4 & 5 Geo. 5, c. 6.	(Affiliation Orders Act, 1914)	194
c. 58.	(Criminal Justice Administration Act, 1914)	194
	s. 5	374
	s. 6	426
	Sched. I.	426
c. clxxii.	(London County Council (Money) Act, 1914)	225
5 & 6 Geo. 5, c. 64.	(Notification of Births (Extension) Act, 1915), s. 2	93
6 & 7 Geo. 5, c. 43.	(War Charities Act, 1916)	110, 111
c. 64.	(Prevention of Corruption Act, 1916)	166
c. 69.	(Public Authorities and Bodies (Loans) Act, 1916)	145, 152, 225
	s. 1	145
	(Air Force Act)—	
	s. 146	168
	s. 181 (5)	168
7 & 8 Geo. 5, c. 64.	(Representation of the People Act, 1918)—	
	s. 3	164, 165
	s. 9 (3)	165
	s. 22	166
	s. 42	164
	Sched. VI.	164
8 & 9 Geo. 5, c. 29.	(Maternity and Child Welfare Act, 1918)	113, 226
c. 39.	(Education Act, 1918)	131
	s. 17	133
c. 43.	(Midwives Act, 1918), s. 14	422
c. 54.	(Tithe Act, 1918), s. 4	17
c. 57.	(War Pensions (Administrative Provisions) Act, 1918)	415
9 & 10 Geo. 5, c. 21.	(Ministry of Health Act, 1919)—	
	s. 2	109
	s. 3	315, 323, 325
	(1) (a)	14
	(2)—(4)	142
	(5)	14
	Sched. I.	14
c. 35.	(Housing, Town Planning, etc., Act, 1919)	45, 226
	s. 24	284
	s. 36	263
c. 46.	(Police Act, 1919)	184
	s. 4	190, 195

		PAGE
9 & 10 Geo. 5, c. 50.	(Ministry of Transport Act, 1919)	248, 380, 392
	s. 2	248
	(1)	141
	s. 11	248
	s. 17	248, 294, 379, 392
	(2)	178, 249
	s. 20	254
c. 57.	(Acquisition of Land (Assessment of Compensation) Act, 1919)	42, 47, 49, 52, 256, 295, 296
	s. 1	41
	s. 12 (2)	44
c. 75.	(Ferries (Acquisition by Local Authorities) Act, 1919)	255
c. 84.	(County and Borough Police Act, 1919)	197
c. 91.	(Ministry of Agriculture and Fisheries Act, 1919).	
	s. 1	17
c. 93.	(Public Libraries Act, 1919)	226
c. 99.	(Housing (Additional Powers) Act, 1919)	152, 207, 225
	s. 8	145
c. 100.	(Electricity (Supply) Act, 1919)	224
	s. 22	238
	(2)	399
	s. 26	234
	s. 39 (1)	141
c. 102.	(Old Age Pensions Act, 1919)	109
10 & 11 Geo. 5, c. 18.	(Finance Act, 1920), Sched. II.	8
c. 28.	(Gas Regulation Act, 1920)	142
	s. 1	142
	s. 4	142
	s. 5	142
	s. 10	142, 233
	ss. 14—16	142
	s. 18	142
c. 30.	(Unemployment Insurance Act, 1920)	22
	s. 8 (3)	447
c. 41.	(Census Act, 1920)	486, 489
	s. 1	486
	s. 4 (2)	488
	s. 5	488
	s. 6	489
	s. 7	489
	Sched.	487
c. 49.	(Blind Persons Act, 1920)	108, 109, 111, 112, 113, 114, 115, 116, 119, 120, 167, 422
	s. 1	110, 112
	s. 2	111, 112, 115, 118
	(1)	111, 113, 114
	(4)	112, 116
	(7)	113
	s. 3	110, 111
	(3)	111
c. 57.	(Unemployment (Relief Works) Act, 1920)	44, 46, 49
	s. 1	45, 46
	(c)	45
	s. 2	45
	(1)	46
	(2)—(5)	46
	s. 4	380
	s. 5 (1)	45
c. 62.	(Women and Young Persons (Employment in Lead Processes) Act, 1920)	301
c. 72.	(Roads Act, 1920)	44, 256, 381
	s. 3	380
	s. 4	44, 252
c. 76.	(Agriculture Act, 1920)	284
c. lxxxviii.	(Coventry Corporation Act, 1920), s. 10	223

	PAGE
10 & 11 Geo. 5, c. cxlvii. (London County Council (Money) Act, 1920)—	
s. 4	181
s. 8	152
11 & 12 Geo. 5, c. 31. (Police Pensions Act, 1921)	184
s. 1	198
s. 2 (1) (a)	197
(3)	198
s. 7 (2)	198
s. 21	197
s. 29 (1) (b)	198
s. 30	187
Sched. III.	187
c. 42. (Licensing Act, 1921), s. 19	60
c. 51. (Education Act, 1921)	96, 97, 98, 100, 101, 104, 107, 108, 131, 133, 134, 135, 136, 138, 139
s. 2	131
s. 3 (3)	135
s. 18	137
s. 19	135
s. 29 (9)	135
s. 33 (2)	135
s. 34	137
s. 41	136, 138
s. 42	97, 98, 105
s. 45 (b)	97
s. 46	362, 377
s. 48	134
(4)	137
s. 49	97
s. 50	387, 390, 391
(4)	134
s. 51	96
(1)	97
(2)	97, 105
s. 52	96
(1)	97, 98
(2)	98, 105
(3)	98
s. 53	96, 98, 105
s. 54	96, 97
(1)	99, 105, 107
(i)	99
(ii)	99
(2)	99, 106
(3)	98
s. 55	96
(1)	99, 105
(a)	99
(b)	100
(2)—(4)	100
(5)	99
(6)	100, 136
(7)	102
s. 56	96, 104
(1)	101
(2)	101
(3)	102
(5)	102
s. 57	96, 102
s. 58	96, 101
s. 59	96
s. 60	96
s. 61	96, 97, 105, 106
s. 62	96
s. 63	96
s. 64	96
(3)	107
(4)	107

		PAGE
11 & 12 Geo. 5, c. 51.	(Education Act, 1921)— <i>continued</i> .	
	s. 65	96, 106
	(2)	107
	(3)	107
	s. 66	96, 107
	s. 67	96
	s. 68	96, 134
	s. 69	96, 97, 106, 113
	ss. 82—85	422
	s. 86	133
	s. 88 (2)	97
	s. 101 (4)	136
	s. 111	137
	s. 114	472
	s. 118 (1)	131
	(4)	131
	s. 128 (5)	136
	s. 138	97, 105
	s. 148 (1)	140
	s. 150	136, 139
	s. 153 (3)	136
	s. 156	136
	(2) (e)	136
	(f)	136
	s. 163	134
	s. 166	284
	s. 170 (12)	390
	Sched. I.	167
	Sched. V.	137
c. 55.	(Railways Act, 1921)—	
	s. 63	43, 233, 252
	s. 69	43
	s. 74	252
c. 67.	(Local Authorities (Financial Provisions) Act, 1921)	
	s. 3	1
c. lxxxviii.	(Lancashire County Council (Drainage) Act, 1921)	458
No. 1.	(Parochial Church Councils (Powers) Measure, 1921)—	
	s. 4 (1) (i)	333
	(ii)	333
	(c)	333
12 & 13 Geo. 5, c. 22.	(Summer Time Act, 1922), s. 3	57
c. 28.	(Bread Acts Amendment Act, 1922)	230
c. 35.	(Celluloid and Cinematograph Film Act, 1922)	301
c. 51.	(Allotments Act, 1922)	51
c. xcii.	(Staffordshire Asylums Act, 1922), s. 18	102
13 Geo. 5, c. 4.	(Fees (Increase) Act, 1923), s. 7	341
13 & 14 Geo. 5, c. 17.	(Explosives Act, 1923)	194
c. 24.	(Housing, etc., Act, 1923)	266
	(Small Dwellings Acquisition Act, 1923) [Part III. of Housing, etc., Act, 1923]	226
c. 38.	(Education (Institution Children) Act, 1923)—	
	s. 2	98, 101
	(4)	96
c. 40.	(Merchant Shipping Acts (Amendment) Act, 1923)	312
c. xcvi.	(West Riding of Yorkshire County Council (Drainage) Act, 1923)	458
14 & 15 Geo. 5, c. 34.	(London Traffic Act, 1924)	57, 238
	s. 10	463
	Sched. III.	463
c. 35.	(Housing (Financial Provisions) Act, 1924)	266
c. lvii.	(London County Council (General Powers) Act, 1924), s. 54	182
15 Geo. 5, c. 14.	(Housing Act, 1925)	45, 209, 225, 282, 287, 302
	s. 6	301, 377
	s. 7	301
	s. 17	287, 302

		PAGE
15 Geo. 5, c. 14.	(Housing Act, 1925)— <i>continued</i> .	
	s. 18	466
	s. 20 (6)	38
	s. 46	48
	s. 87	153, 207
	s. 99	302, 370, 371
	s. 100 (1)	302
	(2)	306
	s. 101	302, 370
	s. 108	397
	Sched. I.	38
c. 16.	(Town Planning Act, 1925)	49
	s. 5 (2) (b)	49
	s. 10 (3)	49
	(4)	49
c. 18.	(Settled Land Act, 1925), s. 54	21
c. 19.	(Trustee Act, 1925)	207
	s. 1 (1)	153
	(m)	487
c. 20.	(Law of Property Act, 1925), s. 9	457
c. 22.	(Land Charges Act, 1925)	261
	s. 10 (1) Class A. (ii)	457
	s. 15 (7) (b)	261
15 & 16 Geo. 5, c. 49.	(Supreme Court of Judicature (Consolidation) Act, 1925)—	
	s. 24	430
	s. 25 (1)	434
	(2)	434, 435
	(3)	435
	(4)	435
	s. 29	434
	s. 31 (1) (a)	431
	(f)	431, 435
	s. 63 (6)	431
c. 51.	(Summary Jurisdiction (Separation and Main- tenance) Act, 1925)	194
c. 52.	(Advertisements Regulation Act, 1925)	182, 362
	s. 1 (c)	258
c. 53.	(Mental Deficiency (Amendment) Act, 1925)	121
c. 64.	(Summer Time Act, 1925), s. 1 (2)	57
c. 65.	(Telegraph (Money) Act, 1925)	261
c. 68.	(Roads Improvement Act, 1925)	46, 294, 296, 297
	s. 1	182
	s. 2	44, 248, 256
	s. 3	381
	s. 4	294, 297
	(7)	294
	s. 5	46, 179, 290, 294, 296, 297
	(2) (a)	295
	(b)	295
	(3)	295
	(5)	295, 296
	(6)	297
	(b)	46, 295
	(8)	295
	(b)	397
	s. 9	294
c. 70.	(Widows', Orphans', and Old Age Contributory Pensions Act, 1925), s. 24 (4)	110
c. 71.	(Public Health Act, 1925)	12, 13, 19, 26, 28, 47, 260, 261, 295, 396
	s. 1 (2)	12
	(3)	12
	s. 3	47, 261
	s. 4	47
	s. 7	261, 296
	(3)	392

15 & 16 Geo. 5, c. 71.

(Public Health Act, 1925)—*continued*.

	s. 9	19, 25
	s. 11	398
	s. 25	398
	s. 27	260, 261
	(1) (a)	260
	(b)	260
	(c)	261
	(d)	261
	(2)	261
	s. 30	301, 398
	s. 33	47, 179, 290, 295, 297
	(5)	296
	(6)	296
	(7)—(9)	297
	(10)	47, 296
	(13) (b)	398
	s. 34	47, 290, 295
	s. 41 (1)	412
	s. 56 (1)	19
	s. 64	400, 404
	s. 66 (1)	119
	s. 67	400
	s. 75	398
	s. 78	232
	(4)	232
	s. 79	214, 216
	s. 80	232, 233
	s. 83	42, 47
	s. 85	25, 378
	(1)	13, 19
	s. 86	22, 378
	s. 87	378
	(1)	19
	(2)	21, 22
	(4)	20
	Sched. IV.	296
	Sched. V.	25
c. 84.	(Workmen's Compensation Act, 1925), Sched. III.	402
c. 86.	(Criminal Justice Act, 1925)	433
	s. 20 (1)	434
c. 87.	(Tithe Act, 1925), s. 19	17
c. 90.	(Rating and Valuation Act, 1925)	267, 386
	s. 1	327
	s. 2	25, 188, 327
	(5)	26, 328, 329, 331
	s. 3	327
	s. 4	327
	s. 9	221, 222
	s. 10 (1)	154
	s. 11 (7)	322
	s. 12	1, 267
	(1)	2
	(2)	2, 4
	(3)	2
	s. 31 (5)	433, 434, 435
	s. 62	327
	s. 68	267
	(4)	320, 321
c. cxv.	(Surrey County Council Act, 1925)	458
c. cxix.	(London County Council (General Powers) Act, 1925)—	
	s. 33	182
	s. 34	182
16 & 17 Geo. 5, c. 11.	(Law of Property (Amendment) Act, 1926), Sched.	261
c. 31.	(Home Counties (Music and Dancing) Licensing Act, 1926)	20

		PAGE
16 & 17 Geo. 5, c. 43.	(Public Health (Smoke Abatement) Act, 1926)—	
s. 2	.	301, 377
s. 5	.	301, 377
c. 48.	(Births and Deaths Registration Act, 1926)—	
s. 1	.	342
(1)	.	343
s. 3 (1)	.	346
(2)	.	347
s. 5	.	313
s. 6	.	342
c. 51.	(Electricity (Supply) Act, 1926)	409
s. 20	.	399
s. 35	.	252
s. 43	.	221, 222, 409
Sched. V.	.	221, 222, 409
c. 54.	(Wireless Telegraphy (Blind Persons Facilities) Act, 1926)	118
c. 56.	(Housing (Rural Workers) Act, 1926)	209
c. 59.	(Coroners (Amendment) Act, 1926), s. 20	345
c. 63.	(Sale of Food (Weights and Measures) Act, 1926)	227,
		229, 230
s. 6	.	227
(2)	.	227, 229
(3)	.	227, 228
(4)	.	229
s. 9 (1)	.	143
s. 10 (4)	.	229
s. 12	.	229
(1)	.	228
(2)	.	228
(4)	.	228
(5)—(7)	.	229
s. 14	.	227, 228
17 Geo. 5, c. 4.	(Royal and Parliamentary Titles Act, 1927), s. 2 (2)	166
17 & 18 Geo. 5, c. 14.	(Poor Law Act, 1927)	157, 444
c. 19.	(Police (Appeals) Act, 1927)	197
s. 2	.	197
c. 23.	(Crown Lands Act, 1927)	143
s. 10	.	17
c. 33.	(Mental Deficiency Act, 1927)	100, 121, 422
s. 1	.	103
(1)	.	100
(b)	.	99
s. 2	.	103, 105
c. 37.	(Road Transport Lighting Act, 1927)	7
s. 1 (1)	.	7, 56
s. 5 (1)	.	7, 56
(c)	.	57
s. 9	.	57
s. 10	.	56
s. 15	.	7
c. xxii.	(London County Council (General Powers) Act, 1927)—	
ss. 30—50	.	183
s. 53	.	182
s. 58	.	183
c. lxxxviii.	(Liverpool Corporation Act, 1927), s. 201	221
c. xc.	(Coventry Corporation Act, 1927)	150
s. 130	.	223
s. 136	.	148
Sched. VI.	.	148, 149
18 & 19 Geo. 5, c. 31.	(Food and Drugs (Adulteration) Act, 1928)	353
s. 1	.	353
s. 2	.	353, 355
ss. 3—5	.	353
s. 6	.	356, 357, 358
(2)	.	355
(5)	.	355

18 & 19 Geo. 5, c. 31.

(Food and Drugs (Adulteration) Act, 1928)—

continued.

s. 7 (2)	354
(4)	355
s. 8	354, 355
(1)	356
(2)	355, 356
s. 9	354, 356
s. 10	355
s. 11	354
(1)	356
(2)	355
s. 12	354
(1) (f)	356
s. 13	358
s. 16 (1)	354
(3)	354
(4)	354, 356
s. 18 (2)	354
s. 22 (1)	356
(2)	355
(3)	356
s. 23	357
s. 27 (6)	353
s. 29	353
(1) (a)	353
s. 34	354, 355, 358
Sched. III.	353
c. 32. (Petroleum (Consolidation) Act, 1928)	104, 411
s. 1 (1) (a)	411
(b)	411
s. 5	411
s. 9	391, 393
s. 10	362
s. 19	411
s. 20	143
c. 44. (Rating and Valuation (Apportionment) Act, 1928), s. 3 (3)	44
c. lxxvii. (London County Council (General Powers) Act, 1928)—	
s. 20	183
s. 35	181
s. 37	183
s. 38	183
s. 39	182
(Electricity (Supply) Act, 1928)	226
(Local Government Act, 1929)	98, 101, 107, 109, 115, 116, 120, 157, 176, 240, 241, 243, 244, 245, 257, 266, 376, 380, 382, 400, 405, 444, 448
s. 4	419
s. 5	107, 115
s. 10	167
s. 14 (1)	400
s. 16	421
s. 27	261
s. 29	231
(4)	245
s. 30	48, 176, 231, 462
(1)	5
(2)	247, 261, 394
(3)	383
s. 31	48, 176, 231, 261, 383, 462
(5)	394
s. 32	176, 231, 245
(1)	382
(6)	245
s. 34	246
s. 35	48, 261, 382

19 Geo. 5, c. 4.

c. 17.

	PAGE
19 Geo. 5, c. 17.	(Local Government Act, 1929)— <i>continued</i> .
s. 35 (1)	246
s. 36	48, 246, 261
s. 37	246, 382
s. 38	247
s. 39	240, 252
s. 46	385, 488
(2)	240
s. 64 (1)	376
s. 85	109
s. 86 (3)	117
ss. 88—91	487
s. 94	487
s. 102 (1)	117
s. 104	118
s. 117 (8)	242
s. 134	242, 245, 487
Sched. I.	48, 247, 248, 261, 383, 394, 402
Sched. II.	109
Sched. IV.	487
(Births and Deaths Registration Act, 1929) [Part	
II. of Local Government Act, 1929]	77
19 & 20 Geo. 5, c. 33.	(Bridges Act, 1929)
s. 1	248, 252, 256, 394, 399
(2)	252
s. 2	253, 399
s. 3	253
(2)	253
(3)	259
(4)	143, 254
(5)	254
(6)	253, 256
s. 4	254
s. 5	254, 398
s. 6	255
s. 7	254, 399
s. 10	254
s. 14	254
c. lxxxvii. (London County Council (General Powers) Act,	252, 253, 254, 255, 392
1929)—	
s. 60	28
Sched. III.	28
No. 1.	(Parochial Registers and Records Measure, 1929),
s. 10	335
20 Geo. 5, c. 17.	(Poor Law Act, 1930)
s. 4	98, 101, 157, 348, 349,
(4)	440
s. 7	446
s. 9	116
s. 15	167
s. 18	442
s. 19	115
s. 20	168
(2)	418
s. 33	441
s. 34	349
s. 40	444
s. 41	444
s. 42	444
s. 43	443, 445
s. 44	444, 448
(2)	444, 448
s. 49	444
s. 52	168
s. 58	446, 447
s. 67	98
s. 75	447
	309, 347

		PAGE
20 Geo. 5, c. 17.	(Poor Law Act, 1930)— <i>continued</i> .	
	s. 75 (2)	347, 348
	(i)	348
	(iii)	348
	(3)	348
	s. 76	309, 347, 348
	s. 77	309, 347
	(1)	348
	s. 78	309, 347, 348
	s. 117	347
	s. 150	448
	s. 151	447, 448
	s. 154	448
	s. 159	448
	s. 163	440, 441, 444
c. 23.	(Mental Treatment Act, 1930)	121, 125
	s. 1 (1)	126, 127
	s. 3 (2)	125
	s. 5 (1)	126
	(iv)	127
	(13)	124
	(14)	125
	(16)	123
	s. 6 (3) (d)	126
	s. 10 (4)	126
	s. 11	122
	(6) (ii)	122
	s. 13	122
	s. 14	123, 126, 127
	s. 15	123
	s. 19	124
20 & 21 Geo. 5, c. 39.	(Housing Act, 1930)	38, 45, 48, 209, 226, 282, 370
	s. 1 (1)	48
	s. 3	48
	s. 8 (iii)	301
	s. 12 (3)	48
	s. 19	287, 467
	s. 20	287, 466
	s. 60	487
	s. 63	466
	(2)	287
	s. 64	466
	Sched. III.	48
	Sched. V.	287, 302, 370
c. 43.	(Road Traffic Act, 1930)	7, 194, 203, 209
	s. 2 (1) (f)	55
	(g)	6
	s. 5 (2) (a)	7
	s. 9 (1)	7
	(2)	7
	s. 25	249
	s. 29	56
	s. 35 (5)	7
	s. 36 (1)	249
	s. 45	56
	(4)	56
	s. 46	195
	s. 47	195
	s. 49	194
	s. 53	256
	(5)	256
	(6)	256
	s. 57	44
	s. 59 (1) (b)	56
	s. 121	249
	Sched. I.	7
c. 44.	(Land Drainage Act, 1930)	37, 449, 460
	s. 1 (2)	450

20 & 21 Geo. 5, c. 44.

(Land Drainage Act, 1930)—*continued*.

PAGE

s. 2 (2)	450, 451
(3)	450, 451
(4)	451
s. 3	453
(1)	450, 455
(2)	452
(3)	452
(a)	452
(5)	450
s. 4 (1) (a)	453
(b)	454
(viii)	454
(2)	454
(3)	453, 454
s. 5 (1)	450, 451
(2)—(6)	451
s. 6	455
(1)	453
(4)	455
(5)	455
s. 7 (1)	453, 455
(2) (a)	455
(b)	455
(4)	455
(5)	455
s. 8	454
(1)—(3)	454
s. 9	454
(1)	456
(2)	457
(3)	457
(5)	457
(6)	456
(7)	457
(8)	457
s. 10	456
(1)	456
(2)—(4)	456
s. 11	456
s. 13	450
s. 14	450
s. 15	458
s. 16	458
s. 20 (1)	458
(a)	458
(b)	458
(3)	458
(4)	458
s. 21 (1)	459
(2)	459
(4)	459
(5)	459
(a)	459
(b)	459
(6)	459
(7)	459
s. 22 (1)—(5)	459
s. 34 (1)	455
(b)	459
(c)	459
s. 38	455
ss. 40—42	455
s. 44	455
s. 45	455, 457
s. 46 (1)	460
(2)	460
(5)	460

20 & 21 Geo. 5, c. 44.

(Land Drainage Act, 1930)—*continued*.

	s. 46 (6)	460
	ss. 47—49	455
	s. 55	459
	(1) (a)	459
	(2)	460
	s. 64 (1)	455
	(2)	455
	s. 65	458
	(2)	454
	s. 66	458
	s. 75	458
	s. 76 (1)	457
	(3)—(6)	457
	s. 77 (1)	458
	(b)	458
	(iii)	458
	(c)	458
	(2)	458
	s. 78	460
	s. 79 (1)	460
	(2)	460
	s. 80	460
	s. 81	449, 450, 451, 452, 453, 454
	s. 83 (2)	454
	Sched. I.	450, 452, 453, 460
	Sched. II.	450, 451, 454
	Sched. IV.	457
	Sched. VI.	460
c. 50.	(Public Works Facilities Act, 1930)	48, 88
	s. 1	45, 48
	s. 2	49
	(1) (b)	49
	s. 4	44
	s. 6	49
	Sched. I.	49
c. lxxxvi.	(Coventry Corporation Act, 1930)	222
c. cxii.	(Liverpool Corporation (General Powers) Act, 1930)—	
	s. 25	222
	s. 40	221
c. clv.	(Ministry of Health Provisional Orders Confirmation (Macclesfield and Willesden) Act, 1930) Sched.	16
c. clviii.	(London Building Act, 1930)	67, 374
	s. 22	297
	s. 25	297
	s. 51	285
	s. 91	384
	s. 184	182, 377
	s. 221	182, 262
	s. 223	262
c. clix.	(London County Council (General Powers) Act, 1930), s. 62	28
21 Geo. 5, c. 12.	(Metropolitan Police (Staff Superannuation and Police Fund) Act, 1931)	67
21 & 22 Geo. 5, c. 22.	(Housing (Rural Workers) Amendment Act, 1931)	209
c. 41.	(Agricultural Land (Utilisation) Act, 1931)	209
c. 45.	(Local Government (Clerks) Act, 1931)	75
	s. 6 (1)	75
	s. 16	75
c. xxxvi.	(Ministry of Health Provisional Orders Confirmation (Accrington and Leicester) Act, 1931)	16
c. lv.	(London County Council (Vauxhall Cross Improvement) Act, 1931)—	
	s. 5	42
	s. 15	42
c. xciii.	(London Squares Preservation Act, 1931), Sched.	82
c. ci.	(Surrey County Council Act, 1931), s. 67	383

	PAGE
22 & 23 Geo. 5, c. 28.	(Public Health (Cleansing of Shell-fish) Act, 1932) 10, 16, 361, 362, 384, 471
c. 46.	(Children and Young Persons Act, 1932) . . . 415
s. 51	415
c. 48.	(Town and Country Planning Act, 1932) . . . 42, 49, 258, 382
s. 9	53
s. 11	53
(1)	52, 302
(2)	49
(3)	49
s. 12	286
s. 14	53
(3)	53
s. 18	50
s. 19	383
s. 21	49
(1)	50
(2) (a)	51
(b)	51
(c)	51
(i)	51
(ii)	51, 393
(3)—(5)	52
(6)	53
(7)	51, 52
(8)	51, 52
(9)	51
(10)	50
(11)	51
(12)	51
s. 22 (1)	50
s. 23	52
(2)	52, 53
(ii)	53
(3)	53
s. 25	49
s. 31	393
s. 32	53
s. 41	398
s. 44	143
s. 47	382
(7)	49
s. 48	49
s. 53	392
s. 54	49
Sched. I.	302
Sched. II.	52, 53, 382
c. xxxvii.	(Thames Conservancy Act, 1932) . . . 460
23 Geo. 5, c. 8.	(Local Government (General Exchequer Con- tributions) Act, 1933), s. 1 . . . 117
c. 12.	(Children and Young Persons Act, 1933) . . . 32, 412, 415
s. 4	33
s. 10	413, 415, 446
s. 18	378
s. 19	378
s. 22 (6)	136
s. 35 (1)	414
(2)	414
s. 46 (3)	99
s. 61	412
(1) (a)	33
(2)	33
s. 62 (1)	34, 414
(2)	33, 414
s. 63	415
s. 68	107

	PAGE
23 Geo. 5, c. 12.	(Children and Young Persons Act, 1933)— <i>continued</i> .
s. 76 (1)	33, 415
(2)	415
s. 96	413, 415
(1)	34
(2)	34
(8)	414
s. 97	415
s. 98	33
(2)	414
s. 107 (1)	32, 33
s. 109 (2)	415
Sched. I.	413, 414
Sched. III.	97
c. 14.	(London Passenger Transport Act, 1933)
s. 63	463
23 & 24 Geo. 5, c. 27.	(Blind Voters Act, 1933), s. 1 (1)
c. 28.	(Municipal Corporations (Audit) Act, 1933)
c. 29.	(Education (Necessity of Schools) Act, 1933)
s. 1 (2)	135
c. 38.	(Summary Jurisdiction (Appeals) Act, 1933)
s. 7 (2)	296, 426
c. 48.	(Expiring Laws Continuance Act, 1933)
c. 51.	(Local Government Act, 1933)
	2, 10, 11, 16, 17, 18,
	21, 22, 27, 31, 34, 54, 68, 71, 72, 75, 83, 88, 145, 152,
	156, 160, 163, 164, 165, 166, 167, 168, 171, 172, 173,
	174, 176, 177, 180, 181, 185, 202, 203, 216, 223, 242,
	258, 267, 268, 269, 316, 321, 322, 323, 328, 329, 330,
	331, 332, 347, 361, 362, 363, 364, 373, 375, 381, 414,
	436, 438, 460, 470, 471, 472, 476, 483, 489
s. 17	164, 328
(2)	179
s. 21 (3)	173
s. 23 (1)	164
(2)	173
(3)	164, 173
s. 24	165
s. 25	164
s. 26 (1)	164
s. 40	119
(2)	119
s. 43	317, 323
(2)	487
(3)	15
s. 47	15
(2)	23
s. 48 (3)	362
s. 57	165
s. 58	165
s. 59	166, 168, 170
(1) (a)	167
(b)	165
(c)	167, 168
(d)	168
(e)	166
(f)	166
(g)	167
(ii)	165
(iii)	165
(iv)	167
(v)	166, 168
(2)—(5)	167
s. 61	172
(2)	172
s. 62	173
s. 63	174
(1)	173, 174, 436
(a)	173

23 & 24 Geo. 5, c. 51.

(Local Government Act, 1933)—*continued*.

PAGE

s. 63 (1) (b)	174
(c)	174
(2)	437
s. 64	174, 437
s. 65	436
s. 66 (1)	437
(2)	437
(3)	437
s. 67 (1)	437
(2)	438
(3)	438
(6)	438
s. 68	173, 438
s. 71	169, 170
s. 75	328
s. 76	170, 171, 328
(2)	180
(3)	180
s. 77	14
s. 84	169, 170, 437
(1)	169
(2) (a)	169
(b)	169
(3) (a)	169
(b)	169
(4)—(6)	169
(7)	169, 170
(8)	167
s. 85	269
s. 86	268
(2)	270
s. 91	15, 185
(4)	332
s. 93 (2)	15
s. 95	171
(a)	172
s. 96	332
s. 104	242
s. 106	21, 177, 483, 484
(1)	177
(2)	484
s. 107	21, 177, 483, 484
(1)	177
(2)	484
s. 114	21
s. 115	177
s. 116	178
s. 119	178
(1)	22
(3)	22
s. 120	178
s. 121	177, 178, 484
(1)	177
s. 122	178
s. 123 (1)	180
(2)	180
s. 124 (1)	177
(3)	178
s. 131	164
(1)	173
s. 136	185, 487
s. 139	69, 487
s. 144	31
s. 156	471
s. 157	15, 328, 471
s. 158	17, 297, 471
s. 159	47, 297, 328, 471

23 & 24 Geo. 5, c. 51.

(Local Government Act, 1933)—*continued*.

s. 159 (2)	16, 471
s. 160	16, 47, 297, 471, 472
s. 161	297, 471
s. 162	471
s. 163	16, 328, 471
(1)	472
s. 164	17, 328, 471, 472
s. 165	17, 328, 471, 472
s. 166	471
s. 167	15, 329, 471
s. 168	16, 329, 330, 471
(3) (b)	330
(4)	330
s. 169	17, 471
s. 170	17, 330, 471
s. 171	471
s. 172	206, 471
(3)	204
s. 173	471
s. 174	382, 471
s. 175	471
s. 176	15, 17, 471
s. 177	471
s. 178	471
s. 179	381, 471
s. 180	347
s. 181	347
s. 182	267, 268, 269
s. 183	347, 408
(1)	268
s. 185	26, 154, 327, 347, 390
(1)	25
s. 186	188, 268, 327, 408
s. 187	327, 347
(1)	25, 154
(2)	155
s. 188	26, 327, 390
(1)	25
s. 189	268, 327, 408
s. 190 (2)	391
(3)	470
s. 192	268
s. 193	2, 268, 323
(3)	26
(4)	330
(5)	26
s. 194	26
s. 195	27, 202, 329, 330, 331
(a) — (e)	27
s. 196 (1)	330
s. 197	206
s. 198	209
(1)	329, 330
(2)	209, 210
s. 199	162, 163, 205
(6)	205
s. 212 (2)	210
s. 213	213
(3)	213, 214, 216
(4)	213, 215
s. 214	215
s. 215	2, 3, 4, 205
(2)	3, 210
s. 216	205
s. 217 (b)	204
s. 218	2, 213
s. 219	26

23 & 24 Geo. 5, c. 51.

(Local Government Act, 1933)—*continued*.

PAGE

s. 223	160
s. 235	156, 160
s. 237	26
(2)	167
(3)	167
s. 238	26
s. 239	26, 156
s. 240	26, 160
(c)	160
s. 243	163
s. 244	162, 475
(5)	162
ss. 245—247	475
s. 248	163
s. 249	10, 54, 58, 361, 362, 366, 462
(2)	361
(3)	361
(5)	361
s. 250	10, 23, 301, 361, 362, 363, 373, 384, 476
(1)	10
(2)	362
(3)—(7)	363
(8)	364
(9)	364
(10)	10
s. 251	10, 11, 373
s. 252	10, 11, 373
s. 253	68, 83, 87
s. 254	68, 72, 83
s. 255	68, 69
(2)	71
(3)	71
s. 256	87
s. 257	87
s. 258 (1)	67
(2)	71
s. 266	18, 21
(2)	18
s. 269	315, 316, 320
s. 271	21
s. 272	15
s. 273	15
s. 277	414
s. 280	75
(2)	75
s. 283 (3)	160
(4)	160
s. 289	364
s. 293 (1)	15
s. 295	173
s. 296	487
(2)	489
s. 300	168
s. 302	386
s. 305	15, 26, 163, 170, 172
s. 307	14, 21, 70
(1) (i)	10, 373
(ii)	364
(v)	177
s. 308	203, 223
(1)	489
Sched. II., Pt. I.	172
Pt. III.	119
Sched. III., Pt. II.	321, 328
Pt. III.	321
Pt. V.	171, 175, 328, 360
Pt. VI.	14, 323, 437

		PAGE
23 & 24 Geo. 5, c. 51.	(Local Government Act, 1933)— <i>continued</i> .	
	Sched. VII.	382
	Sched. VIII.	209, 329
	Sched. IX.	68, 69, 70, 71
	Sched. XI.	328
	Pt. IV.	14, 21
	Pt. V.	18
c. 53.	(Road and Rail Traffic Act, 1933)—	
	s. 29 (4)	195
	s. 30	249
	s. 47	250
c. xxi.	(Oxford Corporation Act, 1933), s. 58	286
c. xxiii.	(City of London (Various Powers) Act, 1933)—	
	s. 6	391
	s. 11	318
	s. 14	376
c. xxvii.	(Norwich Corporation Act, 1933), s. 48	286
c. xxviii.	(London County Council (General Powers) Act, 1933)—	
	s. 66	231
	s. 69	383
c. xli.	(Rugby Corporation Act, 1933), s. 53	286
c. xliv.	(London Overground Wires, etc., Act, 1933)	182, 375, 377
c. lxxvii.	(Kingston upon Hull Corporation Act, 1933)—	
	s. 51	148
	Sched. II.	148
c. lxxxvii.	(Maldens and Coombe Urban District Council Act, 1933)	42
	s. 14	43
	s. 28	235
	Sched. III.	43

TABLE OF CASES

A.

	PAGE
Aerated Bread Co., Ltd. v. Gregg (1873), L. R. 8 Q. B. 355; 42 L. J. (M. C.) 117; 28 L. T. 816; 38 J. P. 86; 21 W. R. 848; 25 Digest 120, 423	228
Airton v. Scott (1909), 100 L. T. 393; 73 J. P. 148; 25 T. L. R. 250; 22 Cox, C. C. 16; 25 Digest 436, 334	54
Alexander v. Jenkins, [1892] 1 Q. B. 797; 61 L. J. (Q. B.) 634; 66 L. T. 391; 56 J. P. 452; 40 W. R. 546; 8 T. L. R. 421; 36 Sol. Jo. 326, C. A.; 32 Digest 44, 463	164
Anderson v. Reid (1902), 86 L. T. 713; 66 J. P. 564; 18 T. L. R. 463; 33 Digest 416, 1271	428
Andrews v. Abertillery Urban Council, [1911] 2 Ch. 398; 80 L. J. (Ch.) 724; 105 L. T. 81; 75 J. P. 449; 9 L. G. R. 1009, C. A.; 20 Digest 201, 19	237, 238
— v. Wirral R.D.C., [1916] 1 K. B. 863; 85 L. J. (K. B.) 853; 114 L. T. 1006; 80 J. P. 257; 14 L. G. R. 521, C. A.; 38 Digest 183, 233	304
Arlidge v. Islington Corp., [1909] 2 K. B. 127; 78 L. J. (K. B.) 553; 100 L. T. 903; 73 J. P. 301; 25 T. L. R. 470; 7 L. G. R. 649; 38 Digest 164, 101	365
Arnold v. Blaker (1871), L. R. 6 Q. B. 433; 40 L. J. (Q. B.) 185; 35 J. P. 775; 19 W. R. 1090; 26 Digest 417, 1359	230
Ashby v. Harris (1868), L. R. 3 C. P. 523; 37 L. J. (M. C.) 164; 18 L. T. 719; 32 J. P. 567; 16 W. R. 869; 7 Digest 543, 230	349
Aspinall v. Sutton, [1894] 2 Q. B. 349; 63 L. J. (M. C.) 205; 58 J. P. 622; 10 R. 465; 33 Digest 414, 1248	427
A.-G. v. Ashborne Recreation Ground Co., [1903] 1 Ch. 101; 72 L. J. (Ch.) 67; 87 L. T. 561; 67 J. P. 73; 51 W. R. 125; 19 T. L. R. 39; 47 Sol. Jo. 50; 1 L. G. R. 146; 28 Digest 367, 36	374
— v. Ashby (1908), 72 J. P. 449; 6 L. G. R. 1058, C. A.; 26 Digest 326, 590	231
— v. Birmingham, Tame and Rea District Drainage Board, [1912] A. C. 788; 82 L. J. (Ch.) 45; 107 L. T. 353; 76 J. P. 481; 11 L. G. R. 194; 41 Digest 30, 226	395
— v. Brecon Corp., (1878), 10 Ch. D. 204; 48 L. J. (Ch.) 153; 40 L. T. 52; 43 J. P. 366; 27 W. R. 332; 33 Digest 82, 530	67
— v. Conduit Colliery Co., [1895] 1 Q. B. 301; 64 L. J. (Q. B.) 207; 71 L. T. 771; 59 J. P. 70; 43 W. R. 366; 11 T. L. R. 57; 15 R. 267; 26 Digest 331, 629	231
— v. Day, [1900] 1 Ch. 31; 69 L. J. (Ch.) 8; 81 L. T. 806; 64 J. P. 88; 26 Digest 372, 980	242
— v. Eastbourne Corp., (1934), 78 Sol. Jo. 192	19
— v. Edwards, [1891] 1 Ch. 194; 63 L. T. 639; 26 Digest 560, 2549	292
— v. Fulham Corp., [1921] 1 Ch. 440; 90 L. J. (Ch.) 281; 125 L. T. 14; 85 J. P. 213; 37 T. L. R. 156; 65 Sol. Jo. 174; 19 L. G. R. 441; 38 Digest 207, 429	12, 20
— v. Great Northern Rail. Co., [1916] 2 A. C. 356; 85 L. J. (Ch.) 717; 115 L. T. 235; 80 J. P. 337; 32 T. L. R. 674; 60 Sol. Jo. 665; 14 L. G. R. 997; 26 Digest 582, 2719	251
— v. Hatch, [1893] 3 Ch. 36; 62 L. J. (Ch.) 857; 69 L. T. 469; 57 J. P. 825; 9 T. L. R. 513; 2 R. 533, C. A.; 26 Digest 564, 2580	291
— v. Hodgson, [1922] 2 Ch. 429; 91 L. J. (Ch.) 426; 127 L. T. 329; 87 J. P. 121; 38 T. L. R. 601; 66 Sol. Jo. 538; 20 L. G. R. 425; 36 Digest 250, 30	365
— v. Hornsey Borough Council, [1927] 1 Ch. 331; 96 L. J. (Ch.) 164; 136 L. T. 502; 91 J. P. 61; 43 T. L. R. 92; 70 Sol. Jo. 1197; 25 L. G. R. 260; Digest Supp.	245, 251, 257

A.-G. v. Laird, [1925] Ch. 318; 94 L. J. (Ch.) 243; 132 L. T. 777; 89 J. P. 95; 69 Sol. Jo. 379; 23 L. G. R. 273, C. A.; 26 Digest 272, 112 .	293
— v. Parish, [1913] 2 Ch. 444; 82 L. J. (Ch.) 562; 109 L. T. 57; 77 J. P. 391; 29 T. L. R. 608; 57 Sol. Jo. 625; 11 L. G. R. 1134, C. A.; 26 Digest 564, 2582 .	291
— v. Prices' Tailors (1928), Ltd., [1930] 2 Ch. 316; 99 L. J. (Ch.) 511; 143 L. T. 416; 94 J. P. 226; 29 L. G. R. 15, C. A.; Digest Supp. .	291
— v. Ringwood R.D.C. (1928), 92 J. P. 65; 26 L. G. R. 174; Digest Supp. .	395
— v. Siddall (1898), <i>Times</i> , June 24th, C. A.; 26 Digest 562, 2564 .	292
— v. Southport Corpn., [1934] 1 K. B. 226; 103 L. J. (K. B.) 117; 98 J. P. 51; 50 T. L. R. 122; 77 Sol. Jo. 899; 32 L. G. R. 71, C. A.; Digest Supp. .	26
— v. Staffordshire County Council, [1905] 1 Ch. 336; 74 L. J. (Ch.) 153; 92 L. T. 288; 69 J. P. 97; 53 W. R. 312; 21 T. L. R. 139; 3 L. G. R. 379; 26 Digest 353, 797 .	259
— v. Tottenham U.D.C. (1909), 73 J. P. 437; 8 L. G. R. 95; 33 Digest 18, 70 .	2
— v. West Ham Corpn., [1910] 2 Ch. 560; 80 L. J. (Ch.) 105; 103 L. T. 394; 74 J. P. 406; 26 T. L. R. 683; 9 L. G. R. 433; 13 Digest 366, 993 .	1, 2
— v. Wimbledon House Estate Co., Ltd., [1904] 2 Ch. 34; 73 L. J. (Ch.) 593; 91 L. T. 163; 68 J. P. 341; 20 T. L. R. 489; 2 L. G. R. 826; 26 Digest 563, 2575; 28 Digest 368, 42 .	293, 375
A.-G. and Doncaster R.D.C. v. West Riding of Yorkshire County Council (1903), 67 J. P. 173; 19 T. L. R. 192; 1 L. G. R. 223; 26 Digest 572, 2638 .	242
A.-G. for Ireland v. Lagan Navigation Co., [1924] A. C. 877; 93 L. J. (P. C.) 241; 131 L. T. 771; 88 J. P. 162; 22 L. G. R. 569; 26 Digest 582, 2717 .	251

B.

Bagg's Case (1615), 11 Co. Rep. 93 b; 1 Roll. Rep. 224; 13 Digest 305, 376 .	175
Bailey v. Barsby, [1909] 2 K. B. 610; 78 L. J. (K. B.) 974; 100 L. T. 370; 73 J. P. 138; 25 T. L. R. 224; 7 L. G. R. 381; 21 Cox, C. C. 795; 25 Digest 120, 427 .	228
Baker v. Portsmouth Corpn. (1878), 3 Ex. D. 157; 47 L. J. (Q. B.) 223; 37 L. T. 822; 42 J. P. 278; 26 W. R. 303, C. A.; 38 Digest 194, 311 .	304
Banks v. Goodwin (1863), 3 B. & S. 548; 1 New Rep. 316; 32 L. J. (M. C.) 87; 7 L. T. 740; 27 J. P. 404; 9 Jur. (N. s.) 891; 11 W. R. 309; 33 Digest 414, 1247 .	427
Barker v. Hodgson (1904), 68 J. P. 310; 33 Digest 413, 1236 .	429
Barnett v. Covell (1903), 90 L. T. 29; 68 J. P. 93; 20 T. L. R. 134; 2 L. G. R. 215; 26 Digest 567, 2601 .	59, 307
Basingstoke School, <i>Re</i> (1877), 41 J. P. Jo. 118; 33 Digest 410, 1198 .	425
Batchelor v. Sturley (1905), 93 L. T. 539; 69 J. P. 398; 3 L. G. R. 1056; 21 Cox, C. C. 35; 38 Digest 161, 78 .	368
Batten v. Gedye (1889), 41 Ch. D. 507; 58 L. J. (Ch.) 549; 60 L. T. 802; 53 J. P. 501; 37 W. R. 540; 5 T. L. R. 415; 19 Digest 263, 465 .	332
Baxter v. Bedford Corpn. (1885), 1 T. L. R. 424; 38 Digest 166, 119 .	370, 371
Bean (William) & Sons, Ltd. v. Flaxton R.D.C., [1929] 1 K. B. 450; 98 L. J. (K. B.) 20; 139 L. T. 320; 92 J. P. 121; 26 L. G. R. 335, C. A.; Digest Supp. .	371
Bedfordshire J.J. v. St. Paul, Bedford (Churchwardens) (1852), 7 Exch. 650; 21 L. J. (M. C.) 228; 16 J. P. 538; 33 Digest 448, 1585 .	430, 432
Bell v. Watson (1932), 96 J. P. Jo. 350 .	228
Bethel's Application, <i>Re</i> (1899), 80 L. T. 492; 63 J. P. 453; 19 Cox, C. C. 262; 33 Digest 257, 1761 .	424
Bignell v. Clarke (1860), 5 H. & N. 485; 29 L. J. (Ex.) 257; 2 L. T. 189; 18 Digest 445, 1819 .	461
Birmingham Corpn. v. Minister of Labour, <i>Re</i> Lee (1927), 92 J. P. 17; 26 L. G. R. 224; 44 Digest 1306, 117 .	22
Blackledge & Sons, Ltd. v. Bolshaw (1908), 99 L. T. 60; 72 J. P. 383; 24 T. L. R. 696; 6 L. G. R. 885; 21 Cox, C. C. 648; 25 Digest 119, 410 .	228
Blackpool Corpn. v. Johnson, [1902] 1 K. B. 646; 71 L. J. (K. B.) 485; 87 L. T. 28; 18 T. L. R. 494; 20 Cox, C. C. 276; 26 Digest 562, 2573 .	293
Blackpool Local Board of Health v. Bennett (1859), 4 H. & N. 127; 32 L. T. (o. s.) 260; 23 J. P. 198; 7 W. R. 382; <i>sub nom.</i> Bennett v. Blackpool Local Board of Health, 28 L. J. (M. C.) 203; 33 Digest 418, 1291 .	430

	PAGE
Blashill v. Chambers (1884), 14 Q. B. D. 479; 53 L. T. 38; 49 J. P. 388; 1 T. L. R. 151; 38 Digest 166, 111	372
Blundell v. Catterall (1821), 5 B. & Ald. 268; 44 Digest 77, 530	8
Board of Education v. Rice, [1911] A. C. 179; 80 L. J. (K. B.) 796; 104 L. T. 689; 75 J. P. 393; 27 T. L. R. 378; 55 Sol. Jo. 440; 9 L. G. R. 652; 19 Digest 602, 290	135
Booth v. Arnold, [1895] 1 Q. B. 571; 64 L. J. (Q. B.) 443; 72 L. T. 310; 59 J. P. 215; 43 W. R. 360; 11 T. L. R. 246; 39 Sol. Jo. 314; 14 R. 326, C. A.; 32 Digest 44, 464; 33 Digest 69, 422	164, 174, 175
Bothamley v. Danby (1871), 24 L. T. 656; 36 J. P. 135; 26 Digest 430, 1494	461
Boulter v. Kent JJ., [1897] A. C. 556; 66 L. J. (Q. B.) 787; 77 L. T. 288; 61 J. P. 532; 46 W. R. 114; 13 T. L. R. 538; 16 Digest 99, 6	424
Bradfield v. Cheltenham Union, [1906] 2 Ch. 371; 75 L. J. (Ch.) 618; 95 L. T. 78; 70 J. P. 371; 54 W. R. 611; 22 T. L. R. 639; 50 Sol. Jo. 560; 4 L. G. R. 961; 13 Mans. 207; 5 Digest 1190, 9610	165
Brentford U.D.C. v. London United Tramways, Ltd. (1901), 45 Sol. Jo. 408; 3 L. G. R. 842, n.; 43 Digest 341, 18	237
Brinckman v. Matley, [1904] 2 Ch. 313; 73 L. J. (Ch.) 642; 91 L. T. 429; 68 J. P. 534; 20 T. L. R. 671; 48 Sol. Jo. 639; 2 L. G. R. 1057, C. A.; 44 Digest 78, 591	8
Bristol Tramways and Carriage Co. v. National Telephone Co., [1899] 2 Ch. 282; 68 L. J. (Ch.) 566; 80 L. T. 836; 63 J. P. 583; 15 T. L. R. 430; 43 Sol. Jo. 603; 43 Digest 346, 48	237
Brown v. Dagenham U.D.C., [1929] 1 K. B. 737; 98 L. J. (K. B.) 565; 140 L. T. 615; 93 J. P. 147; 45 T. L. R. 284; 73 Sol. Jo. 144; 27 L. G. R. 225; Digest Supp.	177, 484
—— v. Turner (1863), 13 C. B. (N. s.) 485; 1 New Rep. 283; 32 L. J. (M. C.) 106; 7 L. T. 681; 27 J. P. 103; 9 Jur. (N. s.) 850; 11 W. R. 290; 33 Digest 418, 1295	430
Bryan v. Whistler (1828), 8 B. & C. 288; 2 Man. & Ry. (K. B.) 318; 6 L. J. (o. s.) (K. B.) 302; 7 Digest 530, 97	349
Budenberg v. Roberts (1867), L. R. 2 C. P. 292; 33 Digest 421, 1327	431
Burnett v. Berry, [1896] 1 Q. B. 641; 65 L. J. (M. C.) 118; 74 L. T. 494; 60 J. P. 375; 44 W. R. 512; 12 T. L. R. 362; 40 Sol. Jo. 459; 18 Cox. C. C. 325; on appeal, 60 J. P. 550; 12 T. L. R. 464; 40 Sol. Jo. 564, C. A.; 25 Digest 435, 326	55
Burrell v. Nicholson (1833), 1 My. & K. 680; 7 Digest 323, 432	31
Burton & Sons v. Mattinson (1902), 86 L. T. 770; 66 J. P. 628; 18 T. L. R. 545; 20 Cox. C. C. 262; 25 Digest 123, 450	355

C.

Calder and Hebble Navigation Co. v. Pilling (1845), 14 M. & W. 76; 3 Ry. & Can. Cas. 735; 14 L. J. (Ex.) 223; 5 L. T. (o. s.) 57; 10 J. P. 24; 9 Jur. 377; 38 Digest 413, 1023	369
Caledonian Rail. Co. v. Glasgow Corp., [1909] A. C. 138; 78 L. J. (P. C.) 52; 99 L. T. 784; 38 Digest 272, 128	251
Cammell, Laird & Co. v. Brownridge (1919), 88 L. J. (K. B.) 1301; 121 L. T. 471; 83 J. P. 190; 17 L. G. R. 441; 38 Digest 182, 227	304
Campbell Davys v. Lloyd, [1901] 2 Ch. 518; 70 L. J. (Ch.) 714; 85 L. T. 59; 49 W. R. 710; 17 T. L. R. 678; 45 Sol. Jo. 670, C. A.; 26 Digest 569, 2622	257
Cardy, <i>Ex parte</i> . See R. v. Southampton Licensing JJ., <i>Ex parte</i> Cardy.	
Cattle v. Stockton Waterworks Co. (1875), L. R. 10 Q. B. 453; 44 L. J. (Q. B.) 139; 33 L. T. 475; 39 J. P. 791; 43 Digest 1096, 267	231
Chamberlain, <i>Ex parte</i> (1857), 8 E. & B. 644; 4 Jur. (N. s.) 477; <i>sub nom.</i> R. v. Devonshire JJ., 30 L. T. (o. s.) 150; 21 J. P. Jo. 773; 6 W. R. 75; 42 Digest 924, 190	59
Chapman v. Fylde Waterworks Co., [1894] 2 Q. B. 599; 64 L. J. (Q. B.) 15; 71 L. T. 539; 59 J. P. 5; 43 W. R. 1; 10 T. L. R. 580; 38 Sol. Jo. 629; 9 R. 582, C. A.; 43 Digest 1085, 188	238
Chard v. Bush, [1923] 2 K. B. 849; 92 L. J. (K. B.) 1013; 130 L. T. 60; 87 J. P. 154; 39 T. L. R. 693; 68 Sol. Jo. 104; 21 L. G. R. 601; 27 Cox. C. C. 527; 37 Digest 205, 30	168
Claydon v. Duncombe (Churchwardens) (1638), 2 Roll. Abr. 287, pl. 52; 7 Digest 526, 68	333
Coaker v. Willcocks, [1911] 2 K. B. 124; 80 L. J. (K. B.) 1026; 104 L. T. 769; 27 T. L. R. 357, C. A.; 18 Digest 341, 758	461

	PAGE
Colchester Brewing Co., Ltd. v. Tendring Licensing JJ., [1916] 2 K. B. 126; 85 L. J. (K. B.) 1001; 114 L. T. 1017; 80 J. P. 313; 32 T. L. R. 401, C. A.; 30 Digest 51, 397	434
Collins v. Greenwood (1910), 103 L. T. 36; 74 J. P. 327; 8 L. G. R. 702; 38 Digest 186, 252	283, 304
Collman v. Mills, [1897] 1 Q. B. 396; 66 L. J. (Q. B.) 170; 75 L. T. 590; 61 J. P. 102; 13 T. L. R. 122; 18 Cox, C. C. 481; 14 Digest 44, 128	369
Conyngham (Marquess) v. Broadstairs and St. Peter's R.D.C. (1911), <i>Times</i> , July 22nd	11
Coomber v. Berks JJ. (1883), 9 App. Cas. 61; 53 L. J. (Q. B.) 239; 50 L. T. 405; 48 J. P. 421; 32 W. R. 525; 2 Tax Cas. 1; 28 Digest 14, 69	191
Cooper v. Hawkins, [1904] 2 K. B. 164; 73 L. J. (K. B.) 113; 89 L. T. 476; 68 J. P. 25; 52 W. R. 233; 19 T. L. R. 620; 1 L. G. R. 833; 42 Digest 602, 1075	361
Copman v. Gallant (1716), 1 P. Wms. 314; 42 Digest 652, 601	371
Cowley (Lord) v. Byas (1877), 5 Ch. D. 944; 37 L. T. 238; 41 J. P. 804; 26 W. R. 1, C. A.; 7 Digest 548, 272	310
Cox v. Burbidge (1863), 13 C. B. (N. S.) 430; 1 New Rep. 238; 32 L. J. (C. P.) 89; 9 Jur. (N. S.) 970; 11 W. R. 435; 2 Digest 233, 218	463
Crane v. Lawrence (1890), 25 Q. B. D. 152; 59 L. J. (M. C.) 110; 63 L. T. 197; 54 J. P. 471; 38 W. R. 620; 6 T. L. R. 370; 17 Cox, C. C. 135; 25 Digest 124, 456	356
Crowhurst v. Amersham Burial Board (1878), 4 Ex. D. 5; 48 L. J. (Q. B.) 109; 39 L. T. 355; 27 W. R. 95; 2 Digest 65, 412	475
Cunliffe v. Whalley (1851), 13 Beav. 411; 26 Digest 326, 592	231

D.

Dartford R.D.C. v. Bexley Heath Rail. Co., [1898] A. C. 210; 67 L. J. (Q. B.) 231; 77 L. T. 601; 62 J. P. 227; 46 W. R. 235; 14 T. L. R. 91; 38 Digest 266, 83	251
Davenport v. Hurdiss (1598), Moore (K. B.) 576; cited in 11 Co. Rep. 86 a; 13 Digest 329, 655	369
Davies v. Ripon Corp., [1928] Ch. 884; 97 L. J. (Ch.) 479; 139 L. T. 636; 92 J. P. 153; 26 L. G. R. 530; Digest Supp.	233, 235
Davis, <i>Re</i> , <i>Ex parte</i> Davis (1872), 7 Ch. App. 526; 41 L. J. (Bcy.) 69; 27 L. T. 53; 20 W. R. 791; 42 Digest 783, 2132	360, 372
Dearden v. Townsend (1865), L. R. 1 Q. B. 10; 6 B. & S. 861; 35 L. J. (M. C.) 50; 13 L. T. 323; 29 J. P. 821; 12 Jur. (N. S.) 120; 14 W. R. 53; 8 Digest 111, 748	368
Dell v. Chesham U.D.C., [1921] 3 K. B. 427; 90 L. J. (K. B.) 1322; 125 L. T. 633; 85 J. P. 186; 37 T. L. R. 731; 19 L. G. R. 489; 26 Digest 408, 1290	395
Devonport Corp. v. Tozer, [1903] 1 Ch. 759; 72 L. J. (Ch.) 411; 88 L. T. 113; 67 J. P. 269; 52 W. R. 6; 19 T. L. R. 257; 47 Sol. Jo. 318; 1 L. G. R. 421, C. A.; 26 Digest 558, 2523	301, 374
Dickeson & Co. v. Mayes, [1910] 1 K. B. 452; 79 L. J. (K. B.) 253; 102 L. T. 287; 74 J. P. 139; 26 T. L. R. 236; 33 Digest 415, 1264	427
Dixon, <i>Re</i> , [1892] P. 386; 56 J. P. 841; 8 T. L. R. 744; 7 Digest 563, 383	349
Dodwell v. Oxford University (1680), 2 Vent. 33; 13 Digest 326, 618	372
Donaldson v. South Shields Corp. (1899), 68 L. J. (Ch.) 162; 79 L. T. 685, C. A.; 11 Digest 119, 125	36
Drew v. Harlow (1875), 39 J. P. Jo. 420; 22 Digest 315, 3079	360, 372
Druitt, <i>Re</i> , Druitt v. Dehler, [1903] 1 Ch. 446; 72 L. J. (Ch.) 441; 88 L. T. 483; 67 J. P. 99; 19 T. L. R. 269; 1 L. G. R. 353, C. A.; 43 Digest 934, 3714	488
Dunning v. Swetman, [1909] 1 K. B. 774; 78 L. J. (K. B.) 359; 100 L. T. 604; 73 J. P. 191; 25 T. L. R. 302; 22 Cox, C. C. 93; 25 Digest 434, 318	54
Dyer v. Park (1874), 38 J. P. Jo. 294; 25 Digest 366, 144	425

E.

Eagle v. Charing Cross Rail. Co. (1867), L. R. 2 C. P. 638; 36 L. J. (C. P.) 297; 16 L. T. 593; 15 W. R. 1016; 11 Digest 144, 286	36
Earl v. Lewis (1801), 4 Esp. 1; 7 Digest 318, 380	31
Edge v. Edwards (1932), 173 L. T. Jo. 398; 96 J. P. Jo. 350; 48 T. L. R. 449; Digest Supp.	429, 430

	PAGE
Edmonds v. Watermen and Lightermen Co. (Master and Senior Warden) (1855), 24 L. J. (M. C.) 124; 1 Jur. (N. S.) 727; 13 Digest 329, 664	367
Edwards v. Roberts, [1891] 1 Q. B. 302; 60 L. J. (M. C.) 6; 55 J. P. 439; 33 Digest 415, 1259	427
— v. Salmon (1889), 23 Q. B. D. 531; 58 L. J. (Q. B.) 571; 54 J. P. 180; 38 W. R. 166, C. A.; 33 Digest 17, 61	180
Ellis v. Lincoln Licensing JJ. (1888), 52 J. P. 88; 30 Digest 71, 563	430
Elwood v. Bullock (1844), 6 Q. B. 383; 13 L. J. (Q. B.) 330; 8 J. P. 473; 8 Jur. 1044; 13 Digest 328, 645	365, 370
Enever v. R. (1906), 3 C. L. R. 969; 11 Digest 525, ff	192
Erskine, Re, Ex parte Erskine (1893), 10 T. L. R. 32; 38 Sol. Jo. 144, C. A.; 4 Digest 27, 209	113
Escott v. Mastin (1842), 4 Moo. P. C. C. 104; Brod. & F. 4; 1 Notes of Cases, 552; 6 Jur. 765; 7 Digest 531, 114	309
Evans v. Hemingway (1887), 52 J. P. 134; 33 Digest 419, 1297	430
Everton v. Walker (1927), 137 L. T. 594; 91 J. P. 125; 43 T. L. R. 554; 25 L. G. R. 333; 28 Cox, C. C. 376; 44 Digest 101, 305	365

F.

Fazakerley v. Wiltshire (1721), 1 Stra. 462; 10 Mod. Rep. 338; 38 Digest 157, 53	366
Finchley Electric Light Co. v. Finchley Urban Council, [1903] 1 Ch. 437; 72 L. J. (Ch.) 297; 88 L. T. 215; 67 J. P. 97; 51 W. R. 375; 19 T. L. R. 238; 47 Sol. Jo. 297, C. A.; 26 Digest 329, 608	231, 262
Fisher v. Oldham Corp., [1930] 2 K. B. 364; 99 L. J. (K. B.) 569; 143 L. T. 281; 94 J. P. 132; 46 T. L. R. 390; 74 Sol. Jo. 299; 28 L. G. R. 293; 29 Cox, C. C. 154; Digest Supp.	188, 191
Fitzgerald, Ex parte. See R. v. De Grey, Ex parte Fitzgerald.	
Fobbing Sewers Commissioners v. R. (1886), 11 App. Cas. 449; 56 L. J. (M. C.) 1; 55 L. T. 493; 51 J. P. 227; 34 W. R. 721; 2 T. L. R. 750; 41 Digest 62, 452	456
Folkestone Corp. v. Woodward (1872), L. R. 15 Eq. 159; 42 L. J. (Ch.) 782; 27 L. T. 574; 37 J. P. 324; 21 W. R. 97; 26 Digest 564, 2590	291
Foss v. Best, [1906] 2 K. B. 105; 75 L. J. (K. B.) 575; 95 L. T. 127; 70 J. P. 383; 22 T. L. R. 542; 21 Cox, C. C. 226; 33 Digest 407, 1176	424, 428
Francis v. Cockrell (1870), L. R. 5 Q. B. 501; 10 B. & S. 950; 39 L. J. (Q. B.) 291; 23 L. T. 466; 18 W. R. 1205; 42 Digest 908, 49	289
Freemantle v. Silk Throwsters' Co. (1668), 1 Lev. 229; sub nom. Silk Throusters (Master, etc.) v. Fremantee, 2 Keb. 309; 13 Digest 332, 704	366

G.

Galloway v. London Corp. (1866), L. R. 1 H. L. 34; 35 L. J. (Ch.) 477; 14 L. T. 865; 30 J. P. 580; 12 Jur. (N. S.) 747; 11 Digest 117, 109	36
Garbutt v. Durham Joint Committee, [1906] A. C. 291; 75 L. J. (K. B.) 459; 94 L. T. 525; 70 J. P. 265; 54 W. R. 596; 22 T. L. R. 444; 4 L. G. R. 647; 37 Digest 194, 139	433
Gas Light and Coke Co. v. St. Mary Abbott's, Kensington Vestry (1885), 15 Q. B. D. 1; 54 L. J. (Q. B.) 414; 53 L. T. 457; 49 J. P. 470; 33 W. R. 892; 1 T. L. R. 452, C. A.; 26 Digest 432, 1508	236
Gentel v. Rapps, [1902] 1 K. B. 160; 71 L. J. (K. B.) 105; 85 L. T. 683; 66 J. P. 117; 50 W. R. 216; 18 T. L. R. 72; 46 Sol. Jo. 69; 20 Cox, C. C. 104; 13 Digest 328, 653	368
Gery v. Black Lion Brewery Co. (1891), 55 J. P. 711; 38 Digest 184, 238	304
Gloucester Local Board of Health v. Chandler (1863), 32 L. J. (M. C.) 66; 7 L. T. 722; 27 J. P. 88; 33 Digest 414, 1244	427
Glover v. Booth (1862), 2 B. & S. 807; 31 L. J. (M. C.) 270; 9 Jur. (N. S.) 76; 33 Digest 421, 1331	431
Godman v. Crofton, [1914] 3 K. B. 803; 83 L. J. (K. B.) 1524; 111 L. T. 754; 79 J. P. 12; 12 L. G. R. 1330; 24 Cox, C. C. 424; 33 Digest 416, 1273	429
Godwin v. Walker (1896), 60 J. P. Jo. 308; 12 T. L. R. 367; 40 Sol. Jo. 481; 25 Digest 436, 332	55
Golding v. Stocking (1869), L. R. 4 Q. B. 516; 10 B. & S. 348; 38 L. J. (M. C.) 122; 20 L. T. 479; 33 J. P. 566; 17 W. R. 722; 26 Digest 429, 1490	461

	PAGE
Goodday (or Goodway) v. Michell (1595), Cro. Eliz. 441; Owen, 71; 7 Digest 321, 413	30
Gooding v. Ealing Local Board (1884), 1 T. L. R. 62; Cab. & El. 359; 38 Digest 193, 304	305
Goodson v. Sunbury Gas Consumers' Co., Ltd. (1896), 75 L. T. 251; 60 J. P. 585; 40 Sol. Jo. 730; 25 Digest 483, 77	239
Gordon v. Cann (1899), 68 L. J. (Q. B.) 434; 80 L. T. 20; 63 J. P. 324; 15 T. L. R. 165; 43 Sol. Jo. 225; 47 W. R. 269; 42 Digest 936, 81	57
Gorton Local Board v. Prison Commissioners (1887), [1904] 2 K. B. 165, n.; 73 L. J. (K. B.) 114, n.; 89 L. T. 478, n.; 68 J. P. 27; 52 W. R. 233, n.; 1 L. G. R. 838, n.; 42 Digest 690, 1050	361
Gosforth and Ponteland Case (1899), 1 Oxley's Light Railways, 95; 43 Digest 362, 227	43
Gout v. Cimitian, [1922] 1 A. C. 105; 91 L. J. (P. C.) 18; 126 L. T. 293; 38 T. L. R. 100; Digest Supp.	113
Grand Junction Canal Co. v. Petty (1888), 21 Q. B. D. 273; 57 L. J. (Q. B.) 572; 59 L. T. 767; 52 J. P. 692; 36 W. R. 795, C. A.; 26 Digest 290, 226	394
Grand Junction Waterworks Co. v. Hampton U.D.C. (1898), 67 L. J. (Q. B.) 903; 79 L. T. 176; 42 Sol. Jo. 716; 26 Digest 560, 2548	293
Grant v. Kearney (1823), 12 Price, 773; 7 Digest 321, 414	30
Gray v. Sylvester (1897), 61 J. P. 807; 46 W. R. 63; 14 T. L. R. 10; 42 Sol. Jo. 13; 38 Digest 165, 105	370
Great Northern and London and North Western Joint Committee v. Inett (1877), 2 Q. B. D. 284; 46 L. J. (M. C.) 237; 41 J. P. 710; 25 W. R. 584; 33 Digest 414, 1245	427
Great Western Rail. Co. v. Bishop (1872), L. R. 7 Q. B. 550; 41 L. J. (M. C.) 120; 26 L. T. 905; 37 J. P. 5; sub nom. R. v. Glamorgan JJ., Great Western Rail. Co. v. Bishop, 20 W. R. 969; 26 Digest 439, 1561	259
Greenwood v. Wadsworth (1873), L. R. 16 Eq. 288; 43 L. J. (Ch.) 78; 29 L. T. 88; 38 J. P. 116; 21 W. R. 722; 7 Digest 548, 271	324
Greville-Smith v. Tomlin, [1911] 2 K. B. 9; 80 L. J. (K. B.) 774; 104 L. T. 816; 75 J. P. 314; 9 L. G. R. 598; 33 Digest 10, 14	167
Grocock v. Grocock, [1920] 1 K. B. 1; 88 L. J. (K. B.) 1068; 121 L. T. 466; 83 J. P. 185; 35 T. L. R. 509; 63 Sol. Jo. 627; 17 L. G. R. 623; 26 Cox, C. C. 485; 33 Digest 414, 1240	429
Guilfoyle v. Port of London Authority, [1932] 1 K. B. 336; 101 L. J. (K. B.) 91; 146 L. T. 91; 95 J. P. 217; 48 T. L. R. 55; 75 Sol. Jo. 763; 29 L. G. R. 659; Digest Supp.	259

H.

Hacking v. Lee (1860), 2 E. & E. 906; 29 L. J. (Q. B.) 204; 2 L. T. 321; 6 Jur. (N. S.) 952; 8 W. R. 495; 13 Digest 556, 1133	360
Hagmaier v. Willesden Overseers, [1904] 2 K. B. 316; 73 L. J. (K. B.) 638; 90 L. T. 683; 68 J. P. 343; 52 W. R. 654; 20 T. L. R. 494; 48 Sol. Jo. 494; 2 L. G. R. 965; 33 Digest 311, 298	424
Hall's Charity, Re (1911), 76 J. P. 9; 28 T. L. R. 32; 10 L. G. R. 11; 26 Digest 578, 2693	242
Hanrahan v. Leigh-on-Sea U.D.C., [1909] 2 K. B. 257; 78 L. J. (K. B.) 725; 101 L. T. 192; 73 J. P. 308; 25 T. L. R. 540; 53 Sol. Jo. 502; 7 L. G. R. 644, C. A.; 38 Digest 182, 224	307
Hardwick v. Brown (1873), L. R. 8 C. P. 406; 28 L. T. 502; 37 J. P. 407; 21 W. R. 639; 33 Digest 48, 281	166
Hart v. Cohen and Van der Laan (1902), 4 F. (Ct. of Sess.) 445; 39 Sc. L. R. 322; 9 S. L. T. 379; 25 Digest 126, c	356
Hastings Tramways Co. v. Hastings and St. Leonards Gas Co., [1906] 2 Ch. 578; 76 L. J. (Ch.) 60; 95 L. T. 684; 79 J. P. 540; 23 T. L. R. 4; 51 Sol. Jo. 12; 5 L. G. R. 142, C. A.; 42 Digest 1072, 103	237
Hawes v. Stephens, [1924] 2 K. B. 179; 93 L. J. (K. B.) 891; 131 L. T. 140; 88 J. P. 97; 40 T. L. R. 682; 68 Sol. Jo. 793; 22 L. G. R. 422; 27 Cox, C. C. 637; 25 Digest 125, 465	357
Hay v. Tower Division of London JJ. (1890), 24 Q. B. D. 561; 59 L. J. (M. C.) 79; 62 L. T. 290; 54 J. P. 500; 38 W. R. 414; 6 T. L. R. 169; 30 Digest 25, 163	166

	PAGE
Haycock v. Joel (1924), 88 J. P. Jo. 717; 33 Digest 414, 1239	429
Headington Union v. St. Olave's Union (1884), 13 Q. B. D. 293; 53 L. J. (M. C.) 91; 48 J. P. 647; <i>sub nom.</i> R. v. Headington Union, 50 L. T. 444; 32 W. R. 738, C. A.; 37 Digest 248, 431	434
Heath's Garage, Ltd. v. Hodges, [1916] 2 K. B. 370; 85 L. J. (K. B.) 1289; 115 L. T. 129; 80 J. P. 321; 32 T. L. R. 570; 60 Sol. Jo. 554; 14 L. G. R. 911, C. A.; 2 Digest 234, 226	462
Hertfordshire County Council v. Great Eastern Rail. Co., [1909] 2 K. B. 403; 78 L. J. (K. B.) 1076; 101 L. T. 213; 73 J. P. 353; 25 T. L. R. 573; 53 Sol. Jo. 575; 7 L. G. R. 1006, C. A.; 26 Digest 587, 2778	394
— v. New River Co., [1904] 2 Ch. 513; 74 L. J. (Ch.) 49; 91 L. T. 796; 68 J. P. 552; 53 W. R. 60; 20 T. L. R. 686; 48 Sol. Jo. 641; 3 L. G. R. 64; 26 Digest 585, 2765	247
Hesketh v. Birmingham Corpn., [1924] 1 K. B. 260; 93 L. J. (K. B.) 461; 130 L. T. 476; 88 J. P. 77; 22 L. G. R. 281, C. A.; 38 Digest 153, 29	395
— v. Braddock (1766), 3 Burr. 1847; 13 Digest 331, 689	366
Heydon's Case (1584), 3 Co. Rep. 7 a; 42 Digest 614, 143	371
Hibbert v. Acton Local Board (1889), 5 T. L. R. 274, C. A.; 38 Digest 180, 222	304
Hickey v. Hay (1900), 65 J. P. 232; 17 T. L. R. 52; 25 Digest 435, 328	55
Higgins v. Harding (1872), L. R. 8 Q. B. 7; 42 L. J. (M. C.) 31; 27 L. T. 483; 37 J. P. 677; 21 W. R. 191; 26 Digest 494, 2033	397
Hill v. Wallasey Local Board, [1894] 1 Ch. 133; 63 L. J. (Ch.) 1; 69 L. T. 641; 42 W. R. 81; 10 T. L. R. 73; 38 Sol. Jo. 56; 7 R. 51, C. A.; 43 Digest 1062, 34	232
— v. Wright and Wilson (1896), 60 J. P. 312; 33 Digest 416, 1270	428, 429
Holborn Guardians v. Chertsey Guardians (1885), 15 Q. B. D. 76; 54 L. J. (M. C.) 137; 53 L. T. 656; 33 W. R. 698; 1 T. L. R. 479; <i>sub nom.</i> Chertsey Union v. Holborn Union, 50 J. P. 36, C. A.; 33 Digest 458, 1708	432
Holland v. Peacock, [1912] 1 K. B. 154; 81 L. J. (K. B.) 256; 105 L. T. 957; 76 J. P. 68; 10 L. G. R. 123; 22 Cox, C. C. 636; 33 Digest 414, 1250	427
Holmes v. Lord Advocate, [1924] W. C. & Ins. Rep. 312	22
Horwood v. Goodall (1872), 36 J. P. 486; 26 Digest 430, 1492	461
Hoskins-Abraham v. Paignton U.D.C., [1929] 1 Ch. 375; 98 L. J. (Ch.) 103; 140 L. T. 397; 93 J. P. 93; 45 T. L. R. 161; 27 L. G. R. 129, C. A.; Digest Supp.	349, 481
Howes (Hawes) v. Peake (1876), 33 L. T. 818; 24 W. R. 407; 3 Char. Fr. Cas. 468; affirmed, 35 L. T. 584, C. A.; 33 Digest 418, 1238	430
Hudson v. Tabor (1877), 2 Q. B. D. 290; 46 L. J. (Q. B.) 463; 36 L. T. 492; 42 J. P. 20; 25 W. R. 740, C. A.; 44 Digest 82, 640	456
Hughes v. Wavertree Local Board (1894), 58 J. P. 654; 10 T. L. R. 357; 33 Digest 414, 1241	429
Huish v. Liverpool JJ., [1914] 1 K. B. 109; 83 L. J. (K. B.) 133; 110 L. T. 38; 78 J. P. 45; 30 T. L. R. 25; 58 Sol. Jo. 83; 12 L. G. R. 15; 16 Digest 99, 13	424
Hyde Corpn. v. Oldham, Ashton and Hyde Electric Tramway, Ltd. (1900), 64 J. P. 596; 16 T. L. R. 492, C. A.; 43 Digest 342, 23	236

I.

Inland Revenue Commissioners v. Lysaght, [1928] A. C. 234; 97 L. J. (K. B.) 385; 139 L. T. 6; 44 T. L. R. 374; 72 Sol. Jo. 270; <i>sub nom.</i> Lysaght v. Inland Revenue Commissioners, 13 Tax Cas. 511; Digest Supp.	113
Ipswich Dock Commissioners v. St. Peter, Ipswich Overseers (1866), 7 B. & S. 310; 30 J. P. 820; 33 Digest 29, 141	29, 30
Irving v. Askew (1870), L. R. 5 Q. B. 208; 39 L. J. (Q. B.) 118; 18 W. R. 467; 13 Digest 506, 567	372

J.

James v. Wyvill (1884), 51 L. T. 237; 48 J. P. 725; 38 Digest 181, 218	303
Jarvin (Inhabitants), <i>Ex parte</i> (1840), 9 Dowl. 120; Woll. 67; 33 Digest 437, 1465	433
Jenkins v. Merthyr Tydvil U.D.C. (1899), 80 L. T. 600; 26 Digest 562, 2570	293

	PAGE
Johnson v. Croydon Corpn. (1886), 16 Q. B. D. 708; 55 L. J. (M. C.) 117; 54 L. T. 295; 50 J. P. 487; 2 T. L. R. 371; 38 Digest 159, 63	368
Jones v. Lee (1911), 106 L. T. 123; 76 J. P. 137; 28 T. L. R. 92; 56 Sol. Jo. 125; 2 Digest 234, 224	463
— v. Walters (1898), 78 L. T. 167; 62 J. P. 374; 14 T. L. R. 265; 19 Cox, C. C. 1; 25 Digest 435, 329	55

K.

Kates v. Jeffery, [1914] 3 K. B. 160; 83 L. J. (K. B.) 1760; 111 L. T. 459; 78 J. P. 310; 12 L. G. R. 974; 24 Cox, C. C. 324; 33 Digest 420, 1308	429
Kearney v. London, Brighton and South Coast Rail. Co. (1871), L. R. 6 Q. B. 759; 40 L. J. (Q. B.) 285; 24 L. T. 913; 20 W. R. 24; 26 Digest 587, 2779	258
Keeling v. Wirral R.D.C. (1925), 23 L. G. R. 201; 38 Digest 188, 261	281
Keighley's Case (1609), 10 Co. Rep. 139 a; 41 Digest 54, 390	456
Kemp v. Wickes (1809), 3 Phillim. 264; 7 Digest 531, 113	309
Kershaw v. Shoreditch Corpn. (1906), 95 L. T. 55; 70 J. P. 190; 22 T. L. R. 302; 4 L. G. R. 302; 33 Digest 11, 23	174
Kinnis v. Graves (1898), 67 L. J. (Q. B.) 583; 78 L. T. 502; 46 W. R. 480; 42 Sol. Jo. 512; 19 Cox, C. C. 42; 26 Digest 562, 2569	293
Kirk v. Hemmings (A. B.), Ltd. (1933), unreported	228
Knight v. Halliwell (1874), L. R. 9 Q. B. 412; 43 L. J. (M. C.) 113; 30 L. T. 359; 38 J. P. 470; 22 W. R. 689; 33 Digest 420, 1305	429
Kruse v. Johnson, [1898] 2 Q. B. 91; 67 L. J. (Q. B.) 782; 78 L. T. 647; 62 J. P. 469; 46 W. R. 630; 14 T. L. R. 416; 42 Sol. Jo. 509; 19 Cox, C. C. 103; 13 Digest 326, 631	365, 369, 372
Kydd v. Liverpool Watch Committee, [1907] 2 K. B. 591; 76 L. J. (K. B.) 1155; 97 L. T. 453; 71 J. P. 408; 23 T. L. R. 624; 5 L. G. R. 1168, C. A.; reversed, [1908] A. C. 327; 77 L. J. (K. B.) 947; 99 L. T. 212; 72 J. P. 395; 24 T. L. R. 772; 52 Sol. Jo. 639; 6 L. G. R. 903; 33 Digest 450, 1607	433, 434

L.

Lawrence v. King (1868), L. R. 3 Q. B. 345; 9 B. & S. 325; 37 L. J. (M. C.) 78; 18 L. T. 356; 32 J. P. 310; 16 W. R. 966; 26 Digest 429, 1489	461
— v. Martin, [1928] 2 K. B. 454; 97 L. J. (K. B.) 707; 139 L. T. 373; 92 J. P. 112; 44 T. L. R. 621; 26 L. G. R. 454; Digest Supp.	426
Leathley v. Webster (1755), Say. 251; 13 Digest 329, 654	368
Lee, Re. See Birmingham Corpn. v. Minister of Labour, Re Lee.	
Leonard v. Hoare & Co. Ltd., [1914] 2 K. B. 798; 83 L. J. (K. B.) 1361; 111 L. T. 69; 78 J. P. 287; 30 T. L. R. 425; 12 L. G. R. 844; 38 Digest 181, 220	307
Lewis v. Weston-super-Mare Local Board (1888), 40 Ch. D. 55; 58 L. J. (Ch.) 39; 59 L. T. 769; 37 W. R. 121; 5 T. L. R. 1; 43 Digest 1061, 30	232
Leyton Local Board v. Causton (1893), 57 J. P. 135; 9 T. L. R. 180; 26 Digest 561, 2559	292
Leyton U.D.C. v. Chew, [1907] 2 K. B. 283; 76 L. J. (K. B.) 781; 96 L. T. 727; 71 J. P. 355; 5 L. G. R. 837; 26 Digest 555, 2505	368
— v. Wilkinson, [1927] 1 K. B. 853; 96 L. J. (K. B.) 383; 137 L. T. 10; 91 J. P. 64; 43 T. L. R. 326; 71 Sol. Jo. 293; 25 L. G. R. 188, C. A.; 33 Digest 413, 1229	426
Lincoln College's Case (1595), 3 Co. Rep. 58 b; 42 Digest 645, 505	371
Livesey, Ex parte. See Re v. Fulwood Local Board, Ex parte Livesey.	
Lodge v. Huddersfield Corpn., [1898] 1 Q. B. 859; 67 L. J. (Q. B.) 571; 78 L. T. 582; 62 J. P. 515; 46 W. R. 482, C. A.; 33 Digest 458, 1710	432
London and Brighton Rail. Co. v. Watson (1879), 4 C. P. D. 118; 48 L. J. (Q. B.) 316; 40 L. T. 183; 43 J. P. 301; 27 W. R. 614, C. A.; 8 Digest 111, 749	368
London and North Western Rail. Co. v. Fobbing Levels Sewers Commissioners (1896), 66 L. J. (Q. B.) 127; 75 L. T. 629; 41 Sol. Jo. 128; 41 Digest 54, 396	456
London Corpn. v. Wolff (1916), 86 L. J. (K. B.) 534; 115 L. T. 830; 80 J. P. 453; 14 L. G. R. 1123; 2 Digest 174, 400	424

	PAGE
L.C.C. v. Davis, L.C.C. v. Rowton House Co. (1897), 77 L. T. 693; 62 J. P. 68; 14 T. L. R. 113; 42 Sol. Jo. 115; 26 Digest 510, 2149 . . .	303
— v. Read, [1900] 1 Q. B. 288; 69 L. J. (Q. B.) 39; 81 L. T. 452; 63 J. P. 775; 48 W. R. 393; 16 T. L. R. 14; 44 Sol. Jo. 27; 19 Cox, C. C. 415; 25 Digest 117, 398 . . .	227
— v. Rowton House Co. See L.C.C. v. Davis, L.C.C. v. Rowton House Co. L.C.C. and City of London Brewery Co., Re, [1898] 1 Q. B. 387; 67 L. J. (Q. B.) 382; 77 L. T. 463; 61 J. P. 808; 46 W. R. 172; 14 T. L. R. 69; 42 Sol. Jo. 81; 38 Digest 566, 1049 . . .	40
London, Edinburgh and Glasgow Assurance Co., Ltd. v. Parkington (1903), 88 L. T. 732; 67 J. P. 255; 19 T. L. R. 389; 47 Sol. Jo. 419; 33 Digest 420, 1307 . . .	429
London School Board, <i>Ex parte</i> . See Murphy, Re, <i>Ex parte</i> London School Board. . .	
London's Chamberlain Case (1590), 5 Co. Rep. 62 b; 1 Roll. Abr. p. 366, pl. 4; 38 Digest 162, 81 . . .	368
Longworth, <i>Ex parte</i> . See R. v. Preston R.D.C., <i>Ex parte</i> Longworth. . .	
Lowe v. Lowrie (1902), 18 T. L. R. 553; 4 Digest 177, 1644 . . .	165
Lowery v. Walker, [1911] A. C. 10; 80 L. J. (K. B.) 138; 103 L. T. 674; 27 T. L. R. 83; 55 Sol. Jo. 62; 2 Digest 241, 267 . . .	463
Lyons & Co., Ltd. v. Houghton, [1915] 1 K. B. 489; 84 L. J. (K. B.) 979; 112 L. T. 771; 79 J. P. 233; 31 T. L. R. 135; 13 L. G. R. 605; 24 Cox, C. C. 666; 25 Digest 119, 412 . . .	227

M.

McCannon v. Sinclair (1859), 2 E. & E. 53; 28 L. J. (M. C.) 247; 33 L. T. (o. s.) 221; 23 J. P. 757; 5 Jur. (N. S.) 1302; 7 W. R. 567; 38 Digest 479, 379 . . .	31
Macclesfield Corpn. v. Great Central Rail. Co., [1911] 2 K. B. 528; 80 L. J. (K. B.) 884; 104 L. T. 728; 75 J. P. 369; 9 L. G. R. 682, C. A.; 26 Digest 581, 2713 . . .	394
Mace v. Philcox (1864), 15 C. B. (N. S.) 600; 3 New Rep. 472; 33 L. J. (C. P.) 124; 9 L. T. 766; 28 J. P. 297; 10 Jur. (N. S.) 680; 12 W. R. 670; 38 Digest 208, 430 . . .	8, 9, 10
McGough v. Lancaster Burial Board (1888), 21 Q. B. D. 323; 57 L. J. (Q. B.) 568; 52 J. P. 740; 36 W. R. 822; 4 T. L. R. 679, C. A.; 7 Digest 543, 231 . . .	349
McIntosh and Pontypridd Improvements Co., Ltd., Re (1891), 61 L. J. (Q. B.) 164; 8 T. L. R. 128; 38 Digest 166, 120 . . .	371
Mackalley's Case (1611), 9 Co. Rep. 65 b; Cro. Jac. 279; <i>sub nom.</i> Anon., Jenk. 291; 42 Digest 942, 132 . . .	191
M'Kinnon v. Penson (1854), 9 Exch. 609; 23 L. J. (M. C.) 97; 22 L. T. (o. s.) 318; 18 J. P. 164; 18 Jur. 513; 2 W. R. 262; 26 Digest 588, 2782 . . .	259
McNair v. Horan (1904), 91 L. T. 555; 68 J. P. 518; 2 L. G. R. 1239; 20 Cox, C. C. 729; 25 Digest 124, 454 . . .	356
Markham, <i>Ex parte</i> (1869), 21 L. T. 748; 34 J. P. 150; 18 W. R. 258; 33 Digest 409, 1186 . . .	429
Marriott v. Tarpley (1838), 9 Sim. 279; 7 L. J. (Ch.) 245; 2 Jur. 464; 19 Digest 292, 865 . . .	332
Marshall v. Smith (1873), L. R. 8 C. P. 416; 33 Digest 419, 1304 . . .	429
Marsland v. Taggart, [1928] 2 K. B. 447; 97 L. J. (K. B.) 787; 139 L. T. 192; 92 J. P. 118; 44 T. L. R. 543; 26 L. G. R. 377; 28 Cox, C. C. 511; Digest Supp. . .	429
Masters v. Pontypool Local Government Board (1878), 9 Ch. D. 677; 47 L. J. (Ch.) 797; 26 Digest 563, 2578 . . .	291
Mayer v. Harding (1867), L. R. 2 Q. B. 410; 2 B. & S. 27, n.; 16 L. T. 429; 31 J. P. 376; 15 W. R. 816; 33 Digest 414, 1252 . . .	427
Maypole Dairy Co., Ltd. v. Patterson, [1923] S. C. (J.) 85; 25 Digest 125, s . . .	357
Merrett v. Charlton Kings U.D.C. (1903), 67 J. P. 419; 26 Digest 559, 2543 . . .	292
Metropolitan Water Board v. Berton, [1921] 1 Ch. 299; 90 L. J. (Ch.) 57; 36 T. L. R. 834; 18 L. G. R. 766; 11 Digest 298, 2298 . . .	44
Millard v. Allwood, [1912] 1 K. B. 590; 81 L. J. (K. B.) 514; 106 L. T. 111; 76 J. P. 139; 10 L. G. R. 127; 22 Cox, C. C. 676; 25 Digest 124, 461 . . .	357, 358
Mitcham Common Conservators v. Cox, Same v. Cole, [1911] 2 K. B. 854; 80 L. J. (K. B.) 1188; 104 L. T. 824; 75 J. P. 471; 27 T. L. R. 492; 9 L. G. R. 843; 11 Digest 88, 1078 . . .	366

Mitcham U.D.C. v. Seale (1933), 97 J. P. 295; 49 T. L. R. 490; 31 L. G. R. 344; Digest Supp.	281
Moore v. Pearce's Dining and Refreshment Rooms, Ltd., [1895] 2 Q. B. 657; 65 L. J. (M. C.) 7; 73 L. T. 400; 59 J. P. 805; 44 W. R. 94; 12 T. L. R. 2; 40 Sol. Jo. 12; 18 Cox, C. C. 196; 15 R. 611; 25 Digest 124, 458	357
Morris (Norris) v. Jeffries (1866), L. R. 1 Q. B. 261; 35 L. J. (M. C.) 143; 13 L. T. 629; 30 J. P. 198; 14 W. R. 310; 26 Digest 429, 1488	461
Motteram v. Eastern Counties Rail. Co. (1859), 7 C. B. (N. s.) 58; 29 L. J. (M. C.) 57; 1 L. T. 101; 24 J. P. 40; 6 Jur. (N. s.) 583; 8 W. R. 77; 33 Digest 419, 1302	429
Muir v. Hore (1877), 47 L. J. (M. C.) 17; 37 L. T. 315; 41 J. P. 471; 33 Digest 408, 1187	425
Mullis v. Hubbard, [1903] 2 Ch. 431; 72 L. J. (Ch.) 593; 88 L. T. 661; 67 J. P. 281; 51 W. R. 571; 1 L. G. R. 769; 26 Digest 559, 2542	292, 293
Munro v. Watson (1887), 57 L. T. 366; 51 J. P. 660; 3 T. L. R. 445; 38 Digest 159, 65	368
Murphy, <i>Re, Ex parte</i> London School Board (1877), 2 Q. B. D. 397; 46 L. J. (M. C.) 193; 36 L. T. 698; 25 W. R. 536; <i>sub nom.</i> R. v. Bridge, <i>Re</i> Murphy, 41 J. P. 693; 19 Digest 564, 64	106

N.

Nantyglo U.D.C. v. Ebley (1905), 69 J. P. Jo. 40; 33 Digest 413, 1237	429
Nash v. Finlay (1901), 85 L. T. 682; 66 J. P. 183; 18 T. L. R. 92; 20 Cox, C. C. 101; 38 Digest 163, 89	369
Newell v. Ormskirk U.D.C. (1907), 71 J. P. 119; 38 Digest 183, 232	304
Newhaven Local Board v. Newhaven School Board (1885), 30 Ch. D. 350; 53 L. T. 571; 34 W. R. 172; 1 T. L. R. 626, C. A.; 26 Digest 563, 2579	291
Newman v. Foster (1916), 86 L. J. (K. B.) 360; 115 L. T. 871; 80 J. P. 471; 15 L. G. R. 124; 25 Cox, C. C. 593; 33 Digest 272, 1900	424
Normanton Gas Co. v. Pope and Pearson, Ltd. (1883), 52 L. J. (Q. B.) 629; 49 L. T. 798; 32 W. R. 134, C. A.; 26 Digest 327, 601	235
North Staffordshire Rail. Co. v. Hanley Corpn. (1909), 73 J. P. 477; 26 T. L. R. 20; 8 L. G. R. 375, C. A.; 26 Digest 574, 2661	251
Northern Theatres Co. v. Shillito, [1925] 2 K. B. 100; 94 L. J. (K. B.) 472; 133 L. T. 156; 89 J. P. 101; 69 Sol. Jo. 459; 23 L. G. R. 288, C. A.; 33 Digest 420, 1306	429
Norton and Penzance Town Council, <i>Re</i> (1872), <i>Times</i> , June 10th; 33 Digest 69, 423	175
Nowell v. Worcester Corpn. (1854), 9 Exch. 457; 23 L. J. (Ex.) 139; 22 L. T. (O. s.) 244; 18 J. P. 88; 18 Jur. 64; 2 C. L. R. 981; 33 Digest 37, 200	18

O.

Oaten v. Auty, [1919] 2 K. B. 278; 88 L. J. (K. B.) 1072; 121 L. T. 215; 83 J. P. 173; 35 T. L. R. 441; 63 Sol. Jo. 554; 17 L. G. R. 697; 26 Cox, C. C. 443; 33 Digest 407, 1172	425
Oldham Union Guardians v. Oldham Corpn. (1854), 23 L. T. (O. s.) 245; 18 J. P. 601; 2 W. R. 590; 43 Digest 1082, 169	21
O'Neill and Galbraith v. Longman (1863), 4 B. & S. 376; 2 New Rep. 427; 32 L. J. (M. C.) 259; 8 L. T. 657; 27 J. P. 452; 10 Jur. (N. s.) 74; 11 W. R. 947; 9 Cox, C. C. 360; 33 Digest 418, 1296	430
Oxford, The, Ltd. v. L.C.C., [1898] 2 Ch. 491; 67 L. J. (Ch.) 655; 79 L. T. 22; 47 W. R. 297; 11 Digest 148, 318	39

P.

Parker v. Bournemouth Corpn. (1902), 86 L. T. 449; 66 J. P. 440; 18 T. L. R. 372; 38 Digest 165, 107	367
— v. Clegg (1903), 2 L. G. R. 608; 38 Digest 208, 432	11
Parkinson v. McNair (1905), 93 L. T. 553; 69 J. P. 399; 3 L. G. R. 982; 21 Cox, C. C. 42; 25 Digest 124, 455	356
Peacock v. R. (1858), 4 C. B. (N. s.) 264; 27 L. J. (C. P.) 224; 31 L. T. (O. s.) 101; 22 J. P. 403; 6 W. R. 517; 33 Digest 412, 1222	426
Peagram v. Peagram, [1926] 2 K. B. 165; 95 L. J. (K. B.) 819; 135 L. T. 48; 90 J. P. 136; 42 T. L. R. 530; 70 Sol. Jo. 670; 28 Cox, C. C. 213; Digest Supp.	424

Penn, <i>Ex parte</i> . See R. v. Davies, <i>Ex parte</i> Penn.	
Pennell v. Uxbridge (Churchwardens) (1862), 31 L. J. (M. C.) 92; 5 L. T. 685; 26 J. P. 87; 8 Jur. (N. S.) 99; 10 W. R. 319; 33 Digest 415, 1253	427
Penny v. Wimbledon U.D.C., [1899] 2 Q. B. 72; 68 L. J. (Q. B.) 704; 80 L. T. 615; 47 W. R. 565, C. A.; 34 Digest 161, 1260	179
Peterborough Corpn. v. Thurlby Overseers (1882), 8 Q. B. D. 586; 33 Digest 448, 1584	432
— v. Wilsthorpe Overseers (1883), 12 Q. B. D. 1; 53 L. J. (M. C.) 33; 50 L. T. 189; 48 J. P. 373; 32 W. R. 548, C. A.; 33 Digest 458, 1707	432
Preston Corpn. v. Fullwood Local Board (1885), 53 L. T. 718; 50 J. P. 228; 34 W. R. 196; 2 T. L. R. 134; 26 Digest 440, 1573	235
Purkis v. Huxtable (1859), 1 E. & E. 780; 28 L. J. (M. C.) 221; 33 L. T. (O. S.) 106; 23 J. P. Jo. 293; 5 Jur. (N. S.) 790; 33 Digest 419, 1303	429
Purves v. Wimbledon and Putney Commons Conservators (1890), 62 L. T. 529; 38 Digest 162, 83	369

Q.

Quinton v. Bristol Corpn. (1874), L. R. 17 Eq. 524; 43 L. J. (Ch.) 783; 30 L. T. 112; 38 J. P. 516; 22 W. R. 434; 11 Digest 117, 110	36
--	----

R.

R. v. Allen (1812), 15 East, 333; 33 Digest 401, 1116	434
— v. Ashwell (1810), 12 East, 22; 13 Digest 338, 770	367
— v. Baker (1867), L. R. 2 Q. B. 621; 36 L. J. (Q. B.) 242; 31 J. P. 692; 15 W. R. 1144; 41 Digest 54, 393	456
— v. Barnes (1884), 1 T. L. R. 24; 26 Digest 570, 2624	257
— v. Bloxam (1834), 1 Ad. & E. 386; 3 Nev. & M. (K. B.) 385; 2 Nev. & M. (M. C.) 269; 3 L. J. (M. C.) 115; 33 Digest 454, 1674	433
— v. Brecon (Inhabitants) (1849), 15 Q. B. 813; 3 New Mag. Cas. 141; 3 New Sess. Cas. 434; 18 L. J. (M. C.) 123; 13 L. T. (O. S.) 89; 13 J. P. 680; 13 Jur. 422; 26 Digest 582, 2723	243, 244
— v. Bridge (1890), 24 Q. B. D. 609; 59 L. J. (M. C.) 49; 62 L. T. 297; 54 J. P. 629; 38 W. R. 464; 17 Cox, C. C. 66; 33 Digest 409, 1192	425
— v. Buckingham County (1878), 43 J. P. 175; 26 Digest 574, 2659	247
— v. Burah (1878), 3 App. Cas. 889; 17 Digest 450, 197	359
— v. Chantrell (1875), L. R. 10 Q. B. 587; 44 L. J. (M. C.) 94; 33 L. T. 305; 39 J. P. 472; 23 W. R. 707; 33 Digest 450, 1604	432
— v. Chart and Longbridge (Inhabitants) (1870), L. R. 1 C. C. R. 237; 39 L. J. (M. C.) 107; 22 L. T. 416; 34 J. P. 454; 18 W. R. 791; 11 Cox, C. C. 502; 26 Digest 571, 2631	244
— v. Coleshill Overseers (1864), 4 B. & S. 667; 34 L. J. (Q. B.) 96; 29 J. P. 311; 7 Digest 541, 212	320
— v. Corser (1892), 8 T. L. R. 563; 33 Digest 419, 1300	430
— v. Crunden (1809), 2 Camp. 89; 15 Digest 747, 8055	11
— v. Darlington Local Board of Health (1865), 6 B. & S. 562; 6 New Rep. 178; 35 L. J. (Q. B.) 45; 29 J. P. 419; 13 W. R. 789; 44 Digest 20, 113	397
— v. Davies, <i>Ex parte</i> Penn (1932), 148 L. T. 19; 96 J. P. 416; 48 T. L. R. 666; 30 L. G. R. 419; Digest Supp.	167
— v. Davis (1795), 6 Term. Rep. 177; 25 Digest 386, 360	430
— v. De Grey, <i>Ex parte</i> Fitzgerald (1913), 109 L. T. 871; 77 J. P. 463; 23 Cox, C. C. 657; 19 Digest 569, 98	100
— v. Derby County (Inhabitants) (1832), 3 B. & Ad. 147; 1 L. J. (M. C.) 15; 26 Digest 574, 2657	243
— v. Derbyshire (Inhabitants) (1842), 2 Q. B. 745; 2 Gal. & Dav. 97; 11 L. J. (M. C.) 51; 6 Jur. 483; 26 Digest 573, 2647	244
— v. Devon (Inhabitants) (1811), 14 East, 477; 26 Digest 585, 2763	246
— v. Devonshire JJ. See Chamberlain, <i>Ex parte</i> .	
— v. Dickenson (1857), 7 E. & B. 831; 27 L. J. (Q. B.) 36; 29 L. T. (O. S.) 180; 22 J. P. 243; 3 Jur. (N. S.) 1076; 5 W. R. 654; 38 Digest 165, 110	372
— v. East and West India Dock Co. (1888), 60 L. T. 232; 53 J. P. 277; <i>sub nom. Re</i> East and West India Dock Co., 5 T. L. R. 151; 26 Digest 581, 2715	251

	PAGE
<i>R. v. East and West India Docks, etc., Rail. Co.</i> (1853), 2 E. & B. 466; 22 L. J. (Q. B.) 380; 21 L. T. (o. s.) 180; 17 J. P. 807; 17 Jur. 1181; 1 W. R. 409; 1 C. L. R. 496; 38 Digest 267, 92	235
— <i>v. Eastbourne Corpn.</i> (1900), 83 L. T. 338; 64 J. P. 724; 16 T. L. R. 546, C. A.; 26 Digest 559, 2539	293
— <i>v. Faversham Fishermen's Co.</i> (1799), 8 Term Rep. 352; 13 Digest 306, 378	175
— <i>v. Foot's Cray U.D.C.</i> , [1916] 1 K. B. 246; 85 L. J. (K. B.) 191; 113 L. T. 705; 79 J. P. 521; 59 Sol. Jo. 597; 13 L. G. R. 1027, C. A.; 38 Digest 181, 221	307
— <i>v. Fulwood Local Board, Ex parte Livesey</i> (1895), 72 L. T. 592; 59 J. P. 311; 26 Digest 561, 2563	293
— <i>v. Glamorgan (Inhabitants)</i> (1788), 2 East, 356, n.; 26 Digest 575, 2667	242
— <i>v. Handley</i> (1864), 9 L. T. 827; <i>sub nom. Handley v. Roper</i> , 28 J. P. 245; 33 Digest 434, 1433	434
— <i>v. Headington Union. See Headington Union v. St. Olave's Union.</i>	
— <i>v. Holbeck Overseers</i> (1851), 16 Q. B. 404; 16 L. T. (o. s.) 503; 15 J. P. 227; 33 Digest 448, 1536	432
— <i>v. Jones and Barry U.D.C.</i> (1907), 96 L. T. 723; 71 J. P. 326; 5 L. G. R. 722; 33 Digest 410, 1203	425
— <i>v. Kerrison</i> (1815), 3 M. & S. 526; 26 Digest 581, 2712	394
— <i>v. Lancaster County (Inhabitants)</i> (1868), 32 J. P. 711; 26 Digest 573, 2653	244
— <i>v. Leigh</i> (1839), 10 Ad. & El. 398; 2 Per. & Dav. 357; 41 Digest 53, 388	456
— <i>v. Lincoln Corpn.</i> (1838), 8 Ad. & El. 65; 3 Nev. & P. (K. B.) 273; 1 Will. Woll. & H. 260; 7 L. J. (Q. B.) 161; 2 Jur. 615, 807; 26 Digest 586, 2769	246
— <i>v. L.C.C.</i> , [1893] 2 Q. B. 454; 63 L. J. (Q. B.) 4; 69 L. T. 580; 58 J. P. 21; 42 W. R. 1; 9 T. L. R. 601; 37 Sol. Jo. 669; 4 R. 531, C. A.; 33 Digest 106, 709	454
— <i>v. Longton Gas Co.</i> (1860), 3 E. & E. 651; 29 L. J. (M. C.) 118; 2 L. T. 14; 24 J. P. 214; 6 Jur. (n. s.) 601; 8 W. R. 293; 8 Cox, C. C. 317; 26 Digest 444, 1618	230
— <i>v. Lundie</i> (1862), 31 L. J. (M. C.) 157; 5 L. T. 830; 26 J. P. 646; 8 Jur. (n. s.) 640; 10 W. R. 267; 13 Digest 333, 716	370
— <i>v. Marlborough Street Police Magistrate, Ex parte Samuel</i> (1919), 63 Sol. Jo. 300, C. A.; 14 Digest 554, 6297	431
— <i>v. Marton cum Grafton (Inhabitants)</i> (1847), 10 Q. B. 971; 3 New Sess. Cas. 5; 16 L. J. (M. C.) 159; 11 J. P. 678; 11 Jur. 927; 33 Digest 451, 1632	434
— <i>v. Milvain JJ.</i> (1884), 1 T. L. R. 159; 15 Digest 1038, 11718	58
— <i>v. Morn Hill Camp (Commanding Officer)</i> , [1917] 1 K. B. 176; 86 L. J. (K. B.) 410; 115 L. T. 927; 81 J. P. 73; 33 T. L. R. 47; 16 Digest 254, 556	113, 425
— <i>v. Newcastle-upon-Tyne Corpn.</i> (1889), 60 L. T. 963; 53 J. P. 788; 5 T. L. R. 467; 38 Digest 191, 294	371
— <i>v. Newport (Salop) JJ.</i> , [1929] 2 K. B. 416; 98 L. J. (K. B.) 555; 141 L. T. 563; 93 J. P. 179; 45 T. L. R. 477; 73 Sol. Jo. 384; 27 L. G. R. 518; 28 Cox, C. C. 658; Digest Supp.	424
— <i>v. Norwich City (Inhabitants)</i> (1719), 1 Stra. 177; 26 Digest 582, 2721	244
— <i>v. Oxfordshire (Inhabitants)</i> (1830), 1 B. & Ad. 289; 8 L. J. (o. s.) (K. B.) 354; 26 Digest 572, 2645	244
— <i>v. Pembrokeshire JJ.</i> (1832), 2 B. & Ad. 391; 1 L. J. (M. C.) 92; 33 Digest 449, 1598	433
— <i>v. Pilkington (Inhabitants)</i> (1844), 5 Q. B. 662; 3 Gal. & Dav. 319; 1 New Sess. Cas. 90; 13 L. J. (M. C.) 61; 2 L. T. (o. s.) 400; 8 J. P. 724; 8 Jur. 267; 33 Digest 451, 1620	434
— <i>v. Poole Corpn.</i> (1887), 19 Q. B. D. 602; 56 L. J. (M. C.) 131; 57 L. T. 485; 52 J. P. 84; 36 W. R. 239; 16 Cox, C. C. 323; 26 Digest 376, 1015	259
— <i>v. Pratt</i> (1867), L. R. 3 Q. B. 64; 37 L. J. (M. C.) 23; 32 J. P. 246; 16 W. R. 146; 26 Digest 438, 1556	55
— <i>v. Preston R.D.C., Ex parte Longworth</i> (1911), 106 L. T. 37; 76 J. P. 65; 10 L. G. R. 238; 38 Digest 192, 296	304, 306
— <i>v. Price</i> (1884), 12 Q. B. D. 247; 53 L. J. (M. C.) 51; 33 W. R. 45, n.; 15 Cox, C. C. 389; 7 Digest 563, 380	308, 309, 310, 313
— <i>v. Reason</i> (1795), 6 Term Rep. 375; 33 Digest 429, 1427	430
— <i>v. Reed</i> (1871), 12 Cox, C. C. 1; 15 Digest 747, 8056	11
— <i>v. ———</i> (1880), 5 Q. B. D. 483; 49 L. J. (Q. B.) 600; 42 L. T. 835; 44 J. P. 633; 28 W. R. 487, C. A.; 13 Digest 360, 954	1

	PAGE
R. v. Rigby (1850), 14 Q. B. 687; 6 Ry. & Can. Cas 479; 19 L. J. (Q. B.) 153; 14 L. T. (o. s.) 438; 14 J. P. 384; 14 Jur. 329; 38 Digest 268, 100	251
— v. Saddler's Co. (1861), 3 E. & E. 72; 30 L. J. (Q. B.) 186; 4 L. T. 54; 25 J. P. 500; 7 Jur. (N. s.) 138; 9 W. R. 281; reversed (1863), 10 H. L. Cas. 404; 32 L. J. (Q. B.) 337; 9 L. T. 60; 28 J. P. 36; 9 Jur. (N. s.) 1081; 11 W. R. 1004; 38 Digest 163, 85	368
— v. St. Cuthbert Wells (Inhabitants) (1834), 5 B. & Ad. 939; 3 Nev. & M. (K. B.) 100; 2 Nev. & M. (M. C.) 93; 3 L. J. (M. C.) 35; 33 Digest 451, 1615	434
— v. Salop County (Inhabitants) (1810), 13 East, 95; 26 Digest 572, 2633; 33 Digest 449, 1593	244, 257, 434
— v. Sharpe (1857), Dears. & B. 160; 26 L. J. (M. C.) 47; 28 L. T. (o. s.) 295; 21 J. P. 86; 3 Jur. (N. s.) 192; 5 W. R. 318; 7 Cox, C. C. 214; 7 Digest 521, 7	310
— v. Somerset Sewers Commissioners (1799), 8 Term Rep. 312; 41 Digest 62, 454	456
— v. South Weald Overseers (1864), 5 B. & S. 391; 4 New Rep. 323; 33 L. J. (M. C.) 193; 10 L. T. 498; 28 J. P. 708; 10 Jur. (N. s.) 1099; 12 W. R. 873; 7 Digest 542, 215	322
— v. Southampton County (Inhabitants) (1886), 17 Q. B. D. 424; 55 L. J. (M. C.) 158; 55 L. T. 322; 50 J. P. 773; 35 W. R. 10; 2 T. L. R. 815; 16 Cox, C. C. 117; 26 Digest 586, 2766	243
— v. — (1887), 19 Q. B. D. 590; 56 L. J. (M. C.) 112; 57 L. T. 261; 52 J. P. 52; 3 T. L. R. 712; 16 Cox, C. C. 271; 26 Digest 575, 2672	242
— v. Southampton County (Inhabitants), Tinker's Bridge Case (1852), 18 Q. B. 841; 21 L. J. (M. C.) 201; 19 L. T. (o. s.) 245; 16 J. P. 438; 17 Jur. 254; 26 Digest 589, 2787	244, 257
— v. Southampton Licensing JJ., <i>Ex parte</i> Cardy, [1906] 1 K. B. 446; 75 L. J. (K. B.) 295; 94 L. T. 437; 70 J. P. 175; 54 W. R. 484; 22 T. L. R. 236; 50 Sol. Jo. 206; 30 Digest 70, 552	434
— v. Stephenson (1884), 13 Q. B. D. 331; 53 L. J. (M. C.) 176; 52 L. T. 267; 49 J. P. 486; 33 W. R. 44; 15 Cox, C. C. 679; 7 Digest 563, 381	309, 313
— v. Stewart (1840), 12 Ad. & El. 773; 4 Per. & Dav. 349; 10 L. J. (M. C.) 40; <i>sub nom.</i> R. v. St. George, Hanover Square, Overseers, Arn. & H. 83; 4 J. P. 792; 5 Jur. 363; 7 Digest 522, 13	309, 310, 347
— v. Stoke-on-Trent JJ., [1926] 2 K. B. 461; 96 L. J. (K. B.) 49; 135 L. T. 122; 90 J. P. 144; 42 T. L. R. 568; 28 Cox, C. C. 261; 33 Digest 412, 1219	426
— v. Stoke-upon-Trent (Inhabitants) (1843), 5 Q. B. 303; 1 Dav. & Mer. 357; 13 L. J. (M. C.) 41; 2 L. T. (o. s.) 148; 8 J. P. 197; 8 Jur. 34; 33 Digest 451, 1623	434
— v. Stone, <i>Ex parte</i> Seton (1908), 99 L. T. 88; 72 J. P. 388; 21 Cox, C. C. 653; 25 Digest 434, 319	54
— v. Suffolk JJ. (1832), 1 Dowl. 163; 33 Digest 449, 1599	433
— v. Surrey (Inhabitants) (1810), 2 Camp. 455; 26 Digest 574, 2656	247
— v. Sutton Coldfield Overseers (1874), L. R. 9 Q. B. 153; 29 L. T. 840; 38 J. P. 166; <i>sub nom.</i> R. v. London and North Western Rail. Co., 43 L. J. (M. C.) 57; <i>sub nom.</i> London and North Western Rail. Co. v. Sutton Coldfield, London and North Western Rail. Co. v. Aston, 22 W. R. 324; 33 Digest 449, 1595	434
— v. Vann (1851), 2 Den. 325; T. & M. 632; 21 L. J. (M. C.) 39; 18 L. T. (o. s.) 174; 15 J. P. 802; 15 Jur. 1090; 5 Cox, C. C. 379; 7 Digest 522, 14	309
— v. Walsall Overseers (1878), 3 Q. B. D. 457; 47 L. J. (Q. B.) 711; 38 L. T. 665; 42 J. P. 644; 26 W. R. 705, C. A.; on appeal <i>sub nom.</i> Walsall Overseers v. London and North Western Rail. Co., 4 App. Cas. 30; 48 L. J. (M. C.) 65; 39 L. T. 453; 43 J. P. 108; 27 W. R. 189; 16 Digest 186, 920; 33 Digest 449, 1600	432, 433
— v. West Riding of York. (Inhabitants) (1806), 7 East, 588; affirmed <i>sub nom.</i> West Riding of Yorkshire (Inhabitants) v. R. (1813), 2 Dow, 1; 5 Taunt. 284; 26 Digest 585, 2762	246
— v. West Riding of Yorkshire (Inhabitants) (1770), 5 Burr. 2594; 2 Wm. Bl. 685; Lofft, 238; 26 Digest 588, 2785	247

	PAGE
<i>R. v. West Riding of Yorkshire (Inhabitants)</i> (1787), 2 East, 353, n.; 26 Digest 577, 2683	247
— <i>v.</i> — (1802), 2 East, 342; 26 Digest 575, 2666	242
— <i>v. West Riding of Yorkshire JJ.</i> (1866), 6 B. & S. 802; <i>sub nom.</i> <i>R. v. Rawson</i> , 15 L. T. 179; 31 J. P. 564; 33 Digest 408, 1180	425
— <i>v. Westhoughton (Inhabitants)</i> (1843), 5 Q. B. 300; 1 Dav. & Mer. 388; 13 L. J. (M. C.) 41; 2 L. T. (o. s.) 147; 7 J. P. 738; 8 Jur. 106; 33 Digest 451, 1628	434
— <i>v. Whitney (Inhabitants)</i> (1835), 3 Ad. & El. 69; 4 Nev. & M. (K. B.) 594; 3 Nev. & M. (M. C.) 56; 1 Har. & W. 147; 4 L. J. (M. C.) 86; 26 Digest 573, 2650	244
— <i>v. Wigan Corpn.</i> (1885), 14 Q. B. D. 908; 54 L. J. (Q. B.) 338; 52 L. T. 435; 49 J. P. 372; 33 W. R. 547; 1 T. L. R. 370; 33 Digest 48, 282	173
— <i>v. Wilts and Berks Canal Co.</i> , [1912] 3 K. B. 623; 82 L. J. (K. B.) 3; 107 L. T. 765; 77 J. P. 24; 10 L. G. R. 1033; 16 Digest 295, 1082	259
— <i>v. Wiltshire JJ.</i> , [1912] 1 K. B. 566; 81 L. J. (K. B.) 518; 106 L. T. 364; 76 J. P. 169; 28 T. L. R. 255; 56 Sol. Jo. 343; 10 L. G. R. 353; 22 Cox, C. C. 737, C. A.; 14 Digest 554, 6295	431
— <i>v. Wistow (Inhabitants)</i> (1841), 3 Q. B. 816, n.; 1 Gal. & Dav. 681; 10 L. J. (M. C.) 112; 33 Digest 451, 1626	434
— <i>v. Woodcock</i> , [1907] 2 K. B. 104; 76 L. J. (K. B.) 683; 96 L. T. 672; 71 J. P. 241; 21 Cox, C. C. 429; 33 Digest 412, 1224	426
— <i>v. Worth (Inhabitants)</i> (1843), 4 Q. B. 132; 3 Gal. & Dav. 376; 7 J. P. 287; 33 Digest 451, 1627	434
— <i>v. Yeomans</i> (1860), 1 L. T. 369; 24 J. P. 149; 33 Digest 410, 1196	425
— <i>v. Yorkshire (West Riding)</i> . See <i>R. v. West Riding of Yorkshire</i> .	
<i>Radcliffe v. Marsden U.D.C.</i> (1908), 72 J. P. 475; 6 L. G. R. 1186; 26 Digest 568, 2611	257
<i>Ramsden v. Manchester, South Junction and Altrincham Rail. Co.</i> (1848), 1 Exch. 723; 5 Ry. & Can. Cas. 552; 10 L. T. (o. s.) 464; 12 Jur. 293; 26 Digest 326, 596	231
<i>Ravensthorpe Local Board v. Hinchcliffe</i> (1889), 24 Q. B. D. 168; 59 L. J. (M. C.) 19; 61 L. T. 780; 54 J. P. 421; 26 Digest 561, 2550	293
<i>Redhill Gas Co. v. Reigate R.D.C.</i> , [1911] 2 K. B. 565; 80 L. J. (K. B.) 1062; 105 L. T. 24; 75 J. P. 358; 9 L. G. R. 814; 25 Digest 473, 24	235
<i>Reigate Corpn. v. Surrey County Council</i> , [1928] Ch. 359; 97 L. J. (Ch.) 168; 138 L. T. 691; 92 J. P. 46; 44 T. L. R. 308; 72 Sol. Jo. 154; 26 L. G. R. 278; Digest Supp.	231, 394
<i>Rennie v. Boardman</i> (1914), 111 L. T. 713; 78 J. P. 420; 12 L. G. R. 1093; 19 Digest 565, 72	106
<i>Repton School (Governors) v. Repton R.D.C.</i> , [1918] 2 K. B. 133; 87 L. J. (K. B.) 897; 119 L. T. 176; 82 J. P. 257; 34 T. L. R. 407; 16 L. G. R. 569, C. A.; 38 Digest 196, 324	304
<i>Reynolds' Case</i> (or <i>Uffington Churchwardens</i>) (1615), 1 Roll. Rep. 259; Moore (K. B.) 916; 19 Digest 515, 3768	30
<i>Rhondda U.D.C. v. Taff Vale Rail. Co.</i> , [1909] A. C. 253; 78 L. J. (K. B.) 647; 100 L. T. 713; 73 J. P. 257; 25 T. L. R. 483; 7 L. G. R. 616; 38 Digest 271, 115	251
<i>Rich v. Bushnell</i> (1827), 4 Hag. Ecc. 164; 7 Digest 529, 95	310
<i>Richards v. A.-G. of Jamaica</i> (1848), 6 Moo. P. C. C. 381; 13 Jur. 197; 42 Digest 782, 2114	360
— <i>v. Easto</i> (1846), 3 Dow. & L. 515; 15 M. & W. 244; 15 L. J. (Ex.) 163; 8 L. T. (o. s.) 253; 10 Jur. 695; 42 Digest 602, 16	454
<i>Richardson v. Methley School Board</i> , [1893] 3 Ch. 510; 62 L. J. (Ch.) 943; 69 L. T. 308; 42 W. R. 27; 9 T. L. R. 603; 37 Sol. Jo. 670; 3 R. 701; 33 Digest 11, 24	174
<i>River Thames Conservators v. Walton-upon-Thames U.D.C.</i> (1907), 96 L. T. 555; 71 J. P. 202; 5 L. G. R. 274; 44 Digest 114, 913	396
<i>River Wear Commissioners v. Adamson</i> (1877), 2 App. Cas. 743; 47 L. J. (Q. B.) 193; 37 L. T. 543; 42 J. P. 244; 26 W. R. 217; 3 Asp. M. L. C. 521; 42 Digest 610, 105	371
<i>Robbins v. Jones</i> (1863), 15 C. B. (N. S.) 221; 3 New Rep. 85; 33 L. J. (C. P.) 1; 9 L. T. 523; 10 Jur. (N. S.) 239; 12 W. R. 248; 26 Digest 575, 2671	242
<i>Roberts v. Leeming</i> (1905), 69 J. P. 417; 3 L. G. R. 1031; 25 Digest 88, 150	355
<i>Robinson v. Barton-Eccles Local Board</i> (1883), 8 App. Cas. 798; 53 L. J. (Ch.) 226; 50 L. T. 57; 48 J. P. 276; 32 W. R. 249; 26 Digest 269, 86	304

	PAGE
Robson v. Biggar, [1903] 1 K. B. 672; 77 L. J. (K. B.) 203; 97 L. T. 859; 24 T. L. R. 125; 52 Sol. Jo. 76, C. A.; 14 Digest 553, 6290.	431
Rochdale Building Society v. Rochdale Corpn. (1886), 51 J. P. 134; 2 T. L. R. 397; 33 Digest 407, 1169.	424
Rockleys, Ltd. v. Pritchard (1909), 101 L. T. 575; 74 J. P. 11; 7 L. G. R. 1069; 26 Digest 567, 2602.	59
Rodwell v. Wade (1924), 23 L. G. R. 174; 38 Digest 187, 260.	281
Rolls v. St. George the Martyr, Southwark Vestry (1880), 14 Ch. D. 785; 49 L. J. (Ch.) 691; 43 L. T. 140; 44 J. P. 680; 28 W. R. 867, C. A.; 26 Digest 330, 627.	231
Rugg v. Kingsmill (1867), L. R. 1 A. & E. 343; 36 L. J. (Eccl.) 17; 31 J. P. 644; on appeal (1868), L. R. 2 P. C. 59; 5 Moo. P. C. C. (n. s.) 79; 37 L. J. (Eccl.) 13; 18 L. T. 94; 32 J. P. 356; 19 Digest 456, 3036.	310
Russell v. Men of Devon (1788), 2 Term Rep. 667; 26 Digest 587, 2780.	259
Russon v. Dutton (No. 1) (1911), 104 L. T. 601; 75 J. P. 209; 27 T. L. R. 197; 9 L. G. R. 558; 22 Cox, C. C. 490; 38 Digest 166, 114.	369
Rust v. St. Botolph, Bishopsgate (Churchwardens and Overseers) (1906), 94 L. T. 575; 33 Digest 415, 1262.	428

S.

St. Mary, Newington Vestry v. Jacobs (1871), L. R. 7 Q. B. 47; 41 L. J. (M. C.) 72; 25 L. T. 800; 36 J. P. 119; 20 W. R. 249; 26 Digest 325, 587.	230
Salkeld v. Johnson (1848), 2 Exch. 256; Cripps' Church Cas. 148; 3 New Mag. Cas. 48; 18 L. J. (Ex.) 89; 11 L. T. (o. s.) 180; 12 J. P. 325; 42 Digest 611, 119.	371
Salt v. Scott Hall, [1903] 2 K. B. 245; 72 L. J. (K. B.) 627; 88 L. T. 868; 67 J. P. 306; 52 W. R. 95; 19 T. L. R. 518; 1 L. G. R. 753; 20 Cox, C. C. 492; 38 Digest 196, 327.	366, 370
Samuel, <i>Ex parte</i> . See R. v. Marlborough Street Police Magistrate, <i>Ex parte</i> Samuel.	
Saunders v. Richardson (1881), 7 Q. B. D. 388; 50 L. J. (M. C.) 137; 45 L. T. 319; 45 J. P. 782; 29 W. R. 800; 19 Digest 566, 80.	431
Schneider v. Batt (1881), 8 Q. B. D. 701; 50 L. J. (Q. B.) 525; 45 L. T. 371; 30 W. R. 420, C. A.; 42 Digest 784, 2141.	360
Schweder v. Worthing Gas Light and Coke Co. (No. 1), [1912] 1 Ch. 83; 81 L. J. (Ch.) 102; 105 L. T. 670; 76 J. P. 3; 28 T. L. R. 34; 56 Sol. Jo. 53; 10 L. G. R. 19; 25 Digest 473, 23.	235, 239
— v. — (No. 2), [1913] 1 Ch. 118; 82 L. J. (Ch.) 71; 107 L. T. 844; 77 J. P. 41; 57 Sol. Jo. 44; 11 L. G. R. 17; 25 Digest 472, 16.	235
Scott v. Glasgow Corpn., [1899] A. C. 470; 68 L. J. (P. C.) 98; 81 L. T. 302; 64 J. P. 132; 15 T. L. R. 498; 33 Digest 538, 146.	370
— v. Pilliner, [1904] 2 K. B. 855; 73 L. J. (K. B.) 998; 91 L. T. 658; 68 J. P. 518; 53 W. R. 284; 20 T. L. R. 662; 2 L. G. R. 1018; 20 Cox, C. C. 731; 25 Digest 436, 333.	369
Seaman v. Burley, [1896] 2 Q. B. 344; 65 L. J. (M. C.) 208; 75 L. T. 91; 60 J. P. 772; 45 W. R. 1; 12 T. L. R. 599; 40 Sol. Jo. 684; 18 Cox, C. C. 403, C. A.; 14 Digest 553, 6289.	431
Senior v. Metropolitan Rail. Co. (1863), 2 H. & C. 258; 2 New Rep. 334; 32 L. J. (Ex.) 225; 8 L. T. 544; 9 Jur. (n. s.) 802; 11 W. R. 836; 11 Digest 147, 315.	36
Seton, <i>Ex parte</i> . See R. v. Stone, <i>Ex parte</i> Seton.	
Sharpness New Docks and Gloucester and Birmingham Navigation Co. v. A.-G., [1915] A. C. 654; 84 L. J. (K. B.) 907; 112 L. T. 826; 79 J. P. 305; 31 T. L. R. 254; 59 Sol. Jo. 381; 13 L. G. R. 563; 26 Digest 581, 2716.	251
Sherborn v. Wells (1863), 3 B. & S. 784; 2 New Rep. 69; 32 L. J. (M. C.) 179; 8 L. T. 274; 27 J. P. 566; 9 Jur. (n. s.) 1104; 11 W. R. 594; 26 Digest 429, 1487.	461
Simmons v. Malling R.D.C., [1897] 2 Q. B. 433; 66 L. J. (Q. B.) 585; 77 L. T. 341; 61 J. P. 502; 45 W. R. 603; 13 T. L. R. 447; 41 Sol. Jo. 561; 38 Digest 229, 597.	365

	PAGE
Simpson v. Denison (1852), 10 Hare, 51; 7 Ry. & Can. Cas. 403; 20 L. T. (o. s.) 46; 16 Jur. 828; 26 Digest 336, 666	255
Sims v. London Necropolis Co. (1885), 1 T. L. R. 584; 7 Digest 548, 268	481
Sittingbourne U.D.C. v. Lipton, Ltd., [1931] 1 K. B. 539; 100 L. J. (K. B.) 109; 144 L. T. 241; 95 J. P. 18; 47 T. L. R. 120; 29 L. G. R. 83; Digest Supp.	296
Slattery v. Naylor (1888), 13 App. Cas. 446; 57 L. J. (P. C.) 73; 59 L. T. 41; 36 W. R. 897; 4 T. L. R. 426; 7 Digest 549, 277; 13 Digest 327, 632	365, 367
Slaughter v. Sunderland Corpn. (1891), 60 L. J. (M. C.) 91; 65 L. T. 250; 55 J. P. 519; 7 T. L. R. 296; 33 Digest 421, 1330; 38 Digest 184, 235	304, 431
Slee v. Bradford Corpn. (1863), 4 Giff. 262; 1 New Rep. 386; 8 L. T. 491; 27 J. P. 612; 9 Jur. (N. S.) 815; 26 Digest 563, 2577	291
Smith v. Butler (1885), 16 Q. B. D. 349; 50 J. P. 260; 34 W. R. 416; 2 T. L. R. 69; 33 Digest 418, 1287	430
— v. Great Yarmouth Port and Haven Commissioners (1919), 88 L. J. (K. B.) 1190; 83 J. P. 193; 35 T. L. R. 517; 17 L. G. R. 477; 41 Digest 960, 8542	367
Somerville and Barr, Ltd. v. Chalmers, [1925] S. C. (J.) 70; Digest Supp.	357
Soothill Upper U.D.C. v. Wakefield R.D.C., [1905] 2 Ch. 516; 74 L. J. (Ch.) 703; 93 L. T. 711; 69 J. P. 447; 21 T. L. R. 766; 3 L. G. R. 1208, C. A.; 33 Digest 37, 199	18
South Eastern Rail. Co. v. L.C.C., [1915] 2 Ch. 252; 84 L. J. (Ch.) 756; 113 L. T. 392; 79 J. P. 545; 13 L. G. R. 1302; sub nom. L.C.C. v. South Eastern Rail. Co., 59 Sol. Jo. 508, C. A.; 11 Digest 124, 156	36
South Staffordshire Waterworks Co. v. Stone (1887), 19 Q. B. D. 168; 56 L. J. (M. C.) 122; 57 L. T. 368; 51 J. P. 662; 36 W. R. 76; 16 Cox, C. C. 300; 33 Digest 411, 1210	429
Southend-on-Sea Corpn. v. Davis (1900), 16 T. L. R. 167; 38 Digest, 159, 68	366
Southwark and Vauxhall Water Co. v. Hampton U.D.C., [1899] 1 Q. B. 273; 68 L. J. (Q. B.) 207; 79 L. T. 512; 80 L. T. 1; 63 J. P. 100; 47 W. R. 177; 15 T. L. R. 95; 43 Sol. Jo. 124, C. A.; affirmed sub nom. Hampton U.D.C. v. Southwark and Vauxhall Water Co., [1900] A. C. 3; 69 L. J. (Q. B.) 72; 81 L. T. 547; 64 J. P. 260; 48 W. R. 209; 16 T. L. R. 60; 33 Digest 370, 791	431
Southwark Revenue Officer v. Hoe (R.) & Co., Ltd. (1930), 143 L. T. 544; 94 J. P. 170; 46 T. L. R. 528; 28 L. G. R. 446; (1926-31), 2 B. R. A. 723; Digest Supp.	44
Spillers, Ltd. v. Cardiff Assessment Committee and Pritchard (Cardiff Revenue Officer), [1931] 2 K. B. 21; 100 L. J. (K. B.) 233; 144 L. T. 503; 95 J. P. 49; 47 T. L. R. 231; 75 Sol. Jo. 173; 29 L. G. R. 411; (1926-31), 2 B. R. A. 818; Digest Supp.	44
Spurling v. Bantoff, [1891] 2 Q. B. 384; 60 L. J. (Q. B.) 745; 65 L. T. 584; 56 J. P. 132; 40 W. R. 157; 17 Cox, C. C. 372; 33 Digest 418, 1289	430
Staffordshire and Derbyshire County Councils, Re (1890), 54 J. P. 566; 26 Digest 582, 2724	244
Stewart v. Wright (1893), 9 T. L. R. 480; 7 Digest 286, 153	5
Stiles v. Galinski, [1904] 1 K. B. 615; 73 L. J. (K. B.) 485; 90 L. T. 437; 68 J. P. 183; 52 W. R. 462; 20 T. L. R. 219; 48 Sol. Jo. 278; 2 L. G. R. 341; 38 Digest 164, 100	365
Stockport Corpn. v. Rollinson (1910), 102 L. T. 567; 74 J. P. 236; 8 L. G. R. 609; 26 Digest 567, 2603	59, 307
Stokes v. Mitcheson, [1902] 1 K. B. 857; 71 L. J. (K. B.) 677; 86 L. T. 767; 66 J. P. 615; 50 W. R. 553; 18 T. L. R. 543; 20 Cox, C. C. 254; 33 Digest 407, 1170	424
Stowel v. Zouch (Lord) (1569), 1 Plowd. 353; 42 Digest 635, 378	371
Strickland v. Hayes, [1896] 1 Q. B. 290; 65 L. J. (M. C.) 55; 74 L. T. 137; 60 J. P. 164; 44 W. R. 398; 12 T. L. R. 199; 40 Sol. Jo. 316; 18 Cox, C. C. 244; 38 Digest 164, 97	370
Sussex Peerage Case (1844), 11 Cl. & Fin. 85; 6 State Tr. (N. S.) 79; 3 L. T. (o. s.) 277; 8 Jur. 793; 42 Digest 650, 569	371
Sutcliffe v. Sowerby Surveyors of Highways (1859), 1 L. T. 7; 23 J. P. 758; 8 W. R. 40; 26 Digest 569, 2620	257
Sutton Local Board v. Hoare (1894), 10 T. L. R. 586; 26 Digest 564, 2585	292
Syred v. Carruthers (1858), E. B. & E. 469; 27 L. J. (M. C.) 273; 23 J. P. 37; 6 W. R. 595; 33 Digest 416, 1265	428

T.

	PAGE
Taylor v. Devey (1837), 7 Ad. & El. 409; 2 Nev. & P. (K. B.) 469; Will. Woll. & Dav. 646; 7 L. J. (M. C.) 11; 1 J. P. 343; 1 Jur. 892; 7 Digest 321, 418	29, 30
—— v. Wilson (1911), 106 L. T. 44; 76 J. P. 69; 28 T. L. R. 97; 22 Cox, C. C. 647; 33 Digest 419, 1299	430
Teale v. Harris (1896), 60 J. P. 744; 13 T. L. R. 15; 38 Digest 159, 67	368
Teddington U.D.C. v. Vile (1906), 70 J. P. 381; 4 L. G. R. 782; 33 Digest 416, 1267	428
Thames Conservators v. Kent, [1918] 2 K. B. 272; 88 L. J. (K. B.) 537; 120 L. T. 16; 83 J. P. 85; 17 L. G. R. 88, C. A.; 44 Digest 114, 914	394, 395
Thames River Conservators v. Walton-upon-Thames U.D.C. (1907), 96 L. T. 555; 71 J. P. 202; 5 L. G. R. 274; 44 Digest 114, 913	396
Thomas v. Sutters, [1900] 1 Ch. 10; 69 L. J. (Ch.) 27; 81 L. T. 469; 63 J. P. Jo. 724; 48 W. R. 133; 16 T. L. R. 7; 44 Sol. Jo. 24; 19 Cox, C. C. 418, C. A.; 25 Digest 435, 327	55
Timothy v. Fenn (1910), 102 L. T. 283; 74 J. P. 123; 8 L. G. R. 156; 22 Digest 315, 3080	360, 372
Tinker's Bridge Case. See R. v. Southampton County (Inhabitants), Tinker's Bridge Case.	
Titchmarsh v. Chapman (1844), 1 Rob. Eccl. 175; 3 Notes of Cases, 370; 4 L. T. (o. s.) 195; 8 Jur. 1077; 7 Digest 530, 106	309
Toler v. Bishop (1895), 65 L. J. (M. C.) 4; 73 L. T. 403; 60 J. P. 9; 12 T. L. R. 3; 18 Cox, C. C. 202; 25 Digest 123, 453	357
Toronto (City) Municipal Corpn. v. Virgo, [1896] A. C. 88; 65 L. J. (P. C.) 4; 73 L. T. 449; 12 T. L. R. 46; 33 Digest 567, 528	366, 370
Torquay Local Board v. Bridle (1882), 47 J. P. 183; 38 Digest 162, 82	367
Treasure & Co. v. Bermondsey Borough Council (1904), 68 J. P. 206; 2 L. G. R. 488; 38 Digest 187, 258	372
Tunbridge Wells Corpn. v. Baird, [1896] A. C. 434; 65 L. J. (Q. B.) 451; 74 L. T. 385; 60 J. P. 788; 12 T. L. R. 372; 26 Digest 330, 618	231
Tyrrell v. Cole (1918), 120 L. T. 156; 83 J. P. 53; 35 T. L. R. 158; 17 L. G. R. 258; 25 Digest 133, 523	425

U.

Uffington Churchwardens (or Reynolds' Case) (1615), 1 Roll. Rep. 259; Moore (K. B.) 916; 19 Digest 515, 3768	30
University College v. Oxford Corpn. (1904), 68 J. P. 470; 20 T. L. R. 637; 26 Digest 320, 520	262
Upperton v. Ridley, [1903] A. C. 281; 72 L. J. (K. B.) 535; 88 L. T. 642; 67 J. P. 349; 19 T. L. R. 522; 1 L. G. R. 659; 20 Cox, C. C. 453; 37 Digest 193, 132	433

V.

V. V. Bread Co. v. Stubbs (1896), 74 L. T. 704; 60 J. P. 424; 12 T. L. R. 454; 40 Sol. Jo. 568; 18 Cox, C. C. 336; 25 Digest 120, 428	228
Viner v. Tonbridge Overseers (1859), 2 E. & E. 9; 28 L. J. (M. C.) 251; 33 L. T. (o. s.) 202; 23 J. P. 773; 5 Jur. (N. S.) 1293; 7 W. R. 553; 7 Digest 541, 208	320

W.

Waite v. Garston Local Board (1867), L. R. 3 Q. B. 5; 37 L. J. (M. C.) 19; 17 L. T. 201; 32 J. P. 228; 16 W. R. 78; 38 Digest 195, 315	370
Walker v. Cummings (1912), 28 T. L. R. 442; 33 Digest 414, 1238	429
—— v. Stretton (1896), 60 J. P. 313; 44 W. R. 525; 12 T. L. R. 363; 40 Sol. Jo. 480; 38 Digest 166, 112	370
Walking (A.) Ltd. v. Robinson (1930), 99 L. J. (K. B.) 171; 143 L. T. 105; 94 J. P. 73; 46 T. L. R. 151; 28 L. G. R. 88; 29 Cox, C. C. 131; Digest Supp.	228, 229
Wallasey Tramway Co. v. Wallasey Local Board (1883), 47 J. P. Jo. 821; 42 Digest 859, 117	364

Wallwork <i>v.</i> Fielding, [1922] 2 K. B. 66; 91 L. J. (K. B.) 568; 127 L. T. 131; 86 J. P. 133; 38 T. L. R. 441; 66 Sol. Jo. 366; 20 L. G. R. 618, C. A.; 37 Digest 180, 24	197
Walsall Overseers <i>v.</i> London and North Western Rail. Co. <i>See</i> <i>R. v. Walsall Overseers</i> .	
Wandsworth Board of Works <i>v.</i> United Telephone Co. (1884), 13 Q. B. D. 904; 53 L. J. (Q. B.) 449; 51 L. T. 148; 48 J. P. 676; 32 W. R. 776, C. A.; 26 Digest 328, 607.	262
Warburton <i>v.</i> Loveland d. Ivie (1828), 1 Hud. & B. 623; 17 Digest 264, <i>t</i>	371
— <i>v.</i> Stamp (1919), 88 L. J. (K. B.) 1170; 121 L. T. 92; 83 J. P. 189; 35 T. L. R. 391; 17 L. G. R. 317; 25 Digest 137, 548	425
Ward <i>v.</i> Gray (1865), 6 B. & S. 345; 34 L. J. (M. C.) 146; 12 L. T. 305; 29 J. P. 470; 11 Jur. (n. s.) 738; 13 W. R. 653; 24 Digest 969, 18	244
— <i>v.</i> Radford (1895), 59 J. P. 632; 11 T. L. R. 587; 5 Digest 1190, 9611	166
Waring <i>v.</i> Griffiths (1758), 1 Burr. 440; 2 Keny. 183; 7 Digest 528, 85	310
Watkin <i>v.</i> Fenwick (1858), 23 J. P. 516; 7 W. R. 16; 33 Digest 418, 1294	430
Watson <i>v.</i> Winch, [1916] 1 K. B. 688; 85 L. J. (K. B.) 537; 114 L. T. 1209; 80 J. P. 149; 32 T. L. R. 244; 14 L. G. R. 486; 13 Digest 338, 772	370
Wear River Commissioners <i>v.</i> Adamson (1877), 2 App. Cas. 743; 47 L. J. (Q. B.) 193; 37 L. T. 543; 42 J. P. 244; 26 W. R. 217; 3 Asp. M. L. C. 521; 42 Digest 610, 105	371
Weld <i>v.</i> Gas Light Co. (1816), 1 Stark. 189; 25 Digest 482, 71	239
West Surrey Water Co. <i>v.</i> Chertsey Union, [1894] 3 Ch. 513; 63 L. J. (Ch.) 806; 71 L. T. 368; 59 J. P. 167; 43 W. R. 6; 10 T. L. R. 581; 38 Sol. Jo. 648; 8 R. 696; 43 Digest 1060, 22	20
Westminster Corpn. <i>v.</i> Gordon Hotels, Ltd., [1907] 1 K. B. 910; 76 L. J. (K. B.) 482; 96 L. T. 535; 71 J. P. 200; 23 T. L. R. 387; 5 L. G. R. 545, C. A.; affirmed, [1908] A. C. 142; 77 L. J. (K. B.) 520; 98 L. T. 681; 72 J. P. 201; 24 T. L. R. 402; 52 Sol. Jo. 334; 6 L. G. R. 520; 38 Digest 234, 640	425, 433
Westmore <i>v.</i> Paine, [1891] 1 Q. B. 482; 60 L. J. (M. C.) 89; 64 L. T. 55; 55 J. P. 440; 39 W. R. 463; 7 T. L. R. 214; 17 Cox, C. C. 244; 33 Digest 411, 1212	429
Wheat <i>v.</i> Brown, [1892] 1 Q. B. 418; 61 L. J. (M. C.) 94; 66 L. T. 464; 56 J. P. 153; 40 W. R. 462; 8 T. L. R. 294; 36 Sol. Jo. 257; 25 Digest 124, 457	357
Wheeler <i>v.</i> Birmingham Overseers (1860), 29 L. J. (M. C.) 175; 2 L. T. 171; 6 Jur. (n. s.) 698; 8 W. R. 412	424
White <i>v.</i> Morley, [1899] 2 Q. B. 34; 68 L. J. (Q. B.) 702; 80 L. T. 761; 63 J. P. 550; 47 W. R. 583; 15 T. L. R. 360; 43 Sol. Jo. 511; 19 Cox, C. C. 345; 13 Digest 328, 652; 25 Digest 436, 330 54, 55, 365, 366	368
— <i>v.</i> St. Marylebone Borough Council, [1915] 3 K. B. 249; 84 L. J. (K. B.) 2142; 113 L. T. 447; 79 J. P. 350; 13 L. G. R. 977; 38 Digest 216, 507	287
Whiteley <i>v.</i> Barley (1888), 21 Q. B. D. 154; 57 L. J. (Q. B.) 643; 60 L. T. 87; 52 J. P. 595; 36 W. R. 823; 4 T. L. R. 585, C. A.; 33 Digest 16, 58	180
Wiffen <i>v.</i> Bailey and Romford U.D.C., [1915] 1 K. B. 600; 84 L. J. (K. B.) 688; 112 L. T. 274; 79 J. P. 145; 31 T. L. R. 64; 59 Sol. Jo. 176; 13 L. G. R. 121, C. A.; 33 Digest 470, 37	431
Wilkinson <i>v.</i> Alton (1908), 99 L. T. 119; 72 J. P. 252; 24 T. L. R. 528; 52 Sol. Jo. 457; 6 L. G. R. 544; 21 Cox, C. C. 655; 25 Digest 122, 442	355
William Bean & Sons, Ltd. <i>v.</i> Flaxton R.D.C. <i>See</i> <i>Bean (William) & Sons, Ltd. v. Flaxton R.D.C.</i>	
Williams <i>v.</i> Baker, [1911] 1 K. B. 566; 80 L. J. (K. B.) 545; 104 L. T. 178; 75 J. P. 89; 9 L. G. R. 178; 25 Digest 125, 463	358
— <i>v.</i> Weston-super-Mare U.D.C. (1907), 98 L. T. 537; 72 J. P. 54; 6 L. G. R. 92; 38 Digest 160, 75	366
— <i>v.</i> — (No. 2) (1910), 103 L. T. 9; 74 J. P. 370; 26 T. L. R. 506; 8 L. G. R. 843, C. A.; 38 Digest 160, 76	366
— <i>v.</i> Williams (1882), 20 Ch. D. 659; 51 L. J. (Ch.) 385; 46 L. T. 275; 46 J. P. 726; 30 W. R. 438; 15 Cox, C. C. 39; 7 Digest 521, 8	310
Willion <i>v.</i> Berkley (1561), 1 Plowd. 227; 42 Digest 635, 377	371
Wills & Sons <i>v.</i> McSherry, [1913] 1 K. B. 20; 82 L. J. (K. B.) 71; 107 L. T. 848; 77 J. P. 65; 29 T. L. R. 48; 23 Cox, C. C. 254; 33 Digest 416, 1269	428
— <i>v.</i> — [1914] 1 K. B. 616; 83 L. J. (K. B.) 596; 110 L. T. 65; 78 J. P. 120; 12 Asp. M. L. C. 426; 41 Digest 244, 848	425

	PAGE
Woking U.D.C. (Basingstoke Canal) Act, 1911, <i>Re</i> , [1914] 1 Ch. 300; 83 L. J. (Ch.) 201; 110 L. T. 49; 78 J. P. 81; 30 T. L. R. 135; 12 L. G. R. 214, C. A.; 40 Digest 305, 2620	393
Wolfenden v. Oliver (1932), 147 L. T. 80; 96 J. P. 202; 48 T. L. R. 394; 30 L. G. R. 263; 29 Cox, C. C. 471; Digest Supp.	228, 229
Woodhouse v. Woods (1859), 29 L. J. (M. C.) 149; 1 L. T. 59; 23 J. P. 759; 6 Jur. (N. S.) 421; 33 Digest 415, 1257	427
Wortley v. Nottingham Local Board (1869), 21 L. T. 582; 33 J. P. 806; 33 Digest 532, 93	366
Wright v. Wallasey Local Board (1887), 18 Q. B. D. 783; 56 L. J. (Q. B.) 259; 52 J. P. 4; 3 T. L. R. 525; 7 Digest 549, 273	326
Wynne v. Ronaldson (1865), 12 L. T. 711; 29 J. P. 566; 13 W. R. 899; 33 Digest 412, 1223	426

Y.

Yabbicom v. King, [1899] 1 Q. B. 444; 68 L. J. (Q. B.) 560; 80 L. T. 159; 63 J. P. 149; 47 W. R. 318; 43 Sol. Jo. 190; 38 Digest 190, 286	370, 371
---	----------

BANKERS' AND OTHER OVERDRAFTS

	PAGE		PAGE
INTRODUCTORY - - - -	1	RAISING MONEY BY ISSUE OF	
TEMPORARY LOANS - - -	1	STOCK - - - -	3
FINANCING CAPITAL EXPENDITURE	2	POOLING OF BANK ACCOUNTS -	4
		LONDON - - - -	4

See also title : BORROWING.

Introductory.—The majority of local authorities find that an overdraft is almost inevitable at some period or periods during the financial year. To retain a sufficient working balance in the bank on revenue account to ensure at least a small cash balance during unfavourable times will often entail holding a balance at other times which is entirely surplus to the needs of the authority, and which, in fact, proves highly uneconomical having regard to the rate of interest which the cash balance will attract while deposited at the local authority's bank. Similarly it will be found undesirable to hold large cash balances on capital account, and the practice of raising a loan for the full amount of a loan sanctioned before the work has been actually commenced is now seldom adopted.

In consequence of the change of opinion in this connection a bank overdraft, during some portion of the financial year, is now regarded as a normal feature of the financial policy of a local authority. [1]

Temporary Loans.—Formerly an overdraft was regarded as an irregular borrowing by a local authority and the payment of interest on an overdraft was illegal (a), but the position was clarified to some extent by the Local Authorities (Financial Provisions) Act, 1921 (b), which empowered a local authority, with the consent of the Minister of Health, to raise a temporary loan by a bank overdraft or otherwise, by which funds could be provided to meet current expenses which had to be incurred before the revenue from which they were ultimately to be defrayed was actually received. Normally such loans were required to be repaid out of the revenue in respect of the financial year in which the expenses were incurred, but the M. of H. had power, when satisfied that the particular circumstances justified such a course, to extend the sanctioned time for repayment to a period not exceeding ten years from the date of the borrowing.

The position was further simplified by sect. 12 of the R. & V.A., 1925 (c). That section imposed on every local authority the duty of making such rates or issuing such precepts as would be sufficient

(a) See, e.g., *R. v. Reed* (1880), 5 Q.B.D. 483; 13 Digest 360, 954; *A.-G. v. West Ham Corpn.*, [1910] 2 Ch. 560; 13 Digest 366, 993.

(b) 11 Statutes 1344.

(c) 14 Statutes 636.

to provide for such part of their total estimated expenditure as was to be met out of moneys raised by rates (sub-sect. (1)). Sub-sect. (2) provided that "the treasurer of a local authority may at any time advance to the authority any sum which the authority may temporarily require and which :

- (a) they are at that time authorised to raise by loan ; or
- (b) they require for the purpose of defraying expenses pending the receipt of rates and revenues receivable by them in respect of the period of account in which those expenses are chargeable " ;

and empowered the authority to pay interest at a reasonable rate on any advance so made. Sub-sect. (3) nevertheless provided that any loss represented by any such charge for interest, if it arose from failure through wilful neglect or default to make or collect such rates, or to issue such precepts as were necessary to cover the expenditure of the local authority for a financial year, should be deemed to be a loss liable to surcharge by the district auditor.

It will be seen that no sanction of a Government department to any advance authorised by sub-sect. (2) of this section was required ; also that the sub-section did not specifically authorise a bank overdraft, but empowered the treasurer to make advances to the authority.

As from June 1, 1934, sub-sects. (2) and (3) of sect. 12 of the R. & V.A., 1925, are repealed by the L.G.A., 1933, together with sect. 3 of the Act of 1921, so far as it relates to county councils, borough and district councils and parish councils. The repealed provisions are replaced by sect. 215 of the L.G.A., 1933 (*d*), which allows any of the councils above mentioned, without the consent of any sanctioning authority, to borrow by way of temporary loan or overdraft from a bank or otherwise, any sums which they may temporarily require :

- (1) for the purpose of defraying expenses (including the payment of sums due by them to meet the expenses of other authorities) pending the receipt of revenues (*e*) receivable by them in respect of the period of account in which those expenses are chargeable and taken into account in the estimates made for that period ;
- (2) for the purpose of defraying, pending the raising of a loan which they have been authorised to raise, expenses intended to be defrayed by means of the loan. [2]

Financing Capital Expenditure.—While the L.G.A., 1933, has cleared the position regarding temporary overdrafts on revenue account pending the receipt of rates and revenues, and has also authorised the borrowing in this form for capital purposes for which a loan sanction has been received, it would seem that a local authority cannot thus finance a revenue scheme for which provision was not included in the estimates. Similarly an authority is not entitled to finance by means of a bank overdraft, or otherwise, any capital expenditure for which a loan sanction has not been obtained. In this latter connection, reference may be made to the cases of *A.-G. v. Tottenham U.D.C.* (*f*) and *A.-G. v. West Ham Corpn.* (*g*). In the *Tottenham Case* the local authority had

(*d*) See 26 Statutes 422. It is not quite clear how the provisions of s. 193 with regard to borrowings by a Parish Council affect the provisions of s. 215.

(*e*) Defined in s. 218 as including all rates, exchequer contributions and other revenues, whether from land or undertakings, or from any other source.

(*f*) (1909), 73 J. P. 437 ; 33 Digest 18, 70.

(*g*) [1910] 2 Ch. 560 ; 13 Digest 366, 993.

incurred a bank overdraft to cover expenditure on the erection of municipal offices in excess of a loan already sanctioned, in anticipation of receiving sanction to a further loan which was subsequently refused, and the court held :

- (1) That the loan by way of overdraft in respect of unsanctioned expenditure was illegal.
- (2) That the council was not entitled to pay interest on money borrowed by overdraft or otherwise without proper sanction.
- (3) That the amount of interest already paid was unlawful and should be disallowed by the district auditor.

The court also granted injunctions :

- (1) Restraining the council from repaying the illegal loan from the rates ; and
- (2) Perpetually restraining them from making any payments of interest on money borrowed without sanction, except where the payment was authorised by statutory authority.

In the *West Ham Case* it was made clear that an authority possessing statutory borrowing powers in respect of their electricity undertaking, such powers being subject to the authority's obtaining the sanction of the Local Government Board (now the Ministry of Health), was debarred from exercising such borrowing powers whether by overdraft or otherwise without obtaining the specific sanction of that Board.

In practice authorities do sometimes spend money in anticipation of a loan sanction, and, more frequently, spend in excess of the amount sanctioned for capital schemes. It is well to recognise, however, that an overdraft for the purpose of financing such expenditure is unlawful, and may involve the authority in legal proceedings, or a disallowance by the district auditor. Where the accounts are not subject to the scrutiny of the district auditor, an overdraft on the part of the council is only likely to be questioned in an action brought by a ratepayer or by the Attorney-General on the relation of a ratepayer, and such action is unlikely unless the operations of the council have been very irregular.

[3]

Raising Money by Issue of Stock.—A local authority frequently finds a bank overdraft particularly helpful when the raising of money by means of an issue of stock is contemplated, or steps are being taken to fund their loan indebtedness. This course is authorised by sect. 215 of the L.G.A., 1933, in so far as the overdraft or temporary loan does not exceed the amount for which unexercised loan sanctions have been obtained, and subject to the condition that the loan or overdraft is a temporary one. Where money is so borrowed by way of temporary loan or overdraft, sub-sect. (2) of sect. 215 provides that for the purposes of the provisions of Part IX. of the Act, regulating the repayment of loans, the authorised loan is, to the extent of the sum temporarily borrowed, to be deemed to have been raised when the temporary borrowing took place. This date becomes, therefore, the material date for the purpose of calculating the dates for the repayment by instalments of so much of the loan as is temporarily borrowed, or, if a sinking fund is formed, of contributions to the sinking fund. Where the temporary loan or overdraft was raised by instalments, it may be necessary to arrive at an equated date covering a period of weeks or months.

[4]

Pooling of Bank Accounts.—It is advisable where separate bank accounts are kept for the several funds of the authority, and particularly where capital is kept separate from revenue, that the bank balances should be merged for interest purposes. It is invariably the case that a higher rate of interest is charged on overdrafts than is allowed on credit balances, and unless such a pooling scheme is arranged with the banker, the effect is that the authority's own credit balances are utilised in advancing money on overdraft to itself, with a consequent loss of interest, or increased charges. In addition, where pooling does not obtain, each fund will require to maintain a working balance, the aggregate of which will usually exceed substantially the margin necessary when all are pooled. The pooling of bank accounts will be found useful to cover a temporary overdraft on capital account. Thus, where a fairly continuous programme of capital expenditure is undertaken, the loans raised or allocated under the terms of the sanction will normally lag behind the expenditure, resulting in a more or less continuous capital overdraft. Where pooling is adopted, the normal working balance in hand on revenue account will usually be sufficient to cover this overdraft.

It is emphasised that under such an arrangement, the separate identity of each fund and banking account can be maintained, the aggregations taking place merely for the calculation of bank interest. In effect, of course, the result is, for practical purposes, the pooling of all balances. [5]

London.—Sect. 12 (2) of the R. & V.A., 1925 (*h*), did not apply to the Metropolis, and sect. 215 of the L.G.A., 1933 (*i*), which Act repealed that section and also so far as the rest of the country is concerned sect. 3 of the Local Authorities (Financial Provisions) Act, 1921 (*k*), is also inapplicable to the Metropolis. The only power of local authorities in the Metropolis to obtain an overdraft is therefore under sect. 3 of the Local Authorities (Financial Provisions) Act, 1921 (*k*), as to which, *see ante*, p. 1. [6]

(*h*) 14 Statutes 637.

(*i*) 26 Statutes 422.

(*k*) 11 Statutes 1344.

BARBED WIRE

See also titles : HIGHWAY NUISANCES ;
OVERHEAD WIRES.

This subject is dealt with by the Barbed Wire Act, 1893 (*a*). The scope of the Act is sufficiently indicated by its long title—"An Act to prevent the use of Barbed Wire for Fences in Roads, Streets, Lanes and other Thoroughfares." The general purpose of the Act is to prevent the use of barbed wire on any land adjoining a highway so as to be a nuisance to the highway, but the long title of the Act suggests that it was not intended to extend to a field path subject to a public

(*a*) 9 Statutes 206.

right of way. "Barbed wire" means any "wire with spikes or jagged projections"; and the expression "nuisance to a highway" as applied to barbed wire, means barbed wire which may probably be injurious to persons or animals lawfully using the highway. The local authorities entitled to take proceedings under the Act are: county councils, any borough council or U.D.C., any sanitary authority in London, and any local authorities having control over highways (sect. 2). In rural districts the local authority for the purposes of the Act will now be the county council as the highway authority in respect of rural districts within the county (*b*).

Where there is on any land adjoining a highway within the county or district of a local authority a fence made with barbed wire, or in or on which barbed wire has been placed, and the barbed wire is a nuisance to the highway, the local authority may serve notice (*c*) in writing upon the occupier of the land requiring him within a specified time—not being less than one month nor more than six months after the date of the notice—to abate the nuisance. If on the expiration of the time stated in the notice, the occupier shall have failed to comply therewith, the local authority may apply to a court of summary jurisdiction, and the court, if satisfied that the wire is a nuisance to the highway, may by summary order direct the occupier to abate the nuisance. In the event of his failure to comply with the order within a reasonable time, the local authority may do whatever may be necessary in execution of the order, and recover in a summary manner the expenses thus incurred (sect. 3). Where the local authority are the occupiers of the land, proceedings may be taken by any ratepayer. The notice in such case is to be served upon the clerk to the local authority (sect. 4).

At common law the general principle is, that a person may recover damages for injury suffered in consequence of a barbed-wire fence or other structure erected adjoining a highway, where the fence or structure is so constructed or placed as to be dangerous to the public (*d*).

[7]

London.—By sect. 2 of the Act of 1893 the local authorities for the purposes of the Act are, in London, the sanitary authorities, that is to say, in the City, the Common Council (*e*), and, elsewhere, a metropolitan borough council (*f*). [8]

(*b*) L.G.A., 1929, s. 30 (1); 10 Statutes 904.

(*c*) For form of notice, see 7 Ency. Forms, title "Highways," p. 235.

(*d*) *Stewart v. Wright* (1893), 9 T. L. R. 480; 7 Digest 286, 153.

(*e*) Public Health (London) Act, 1891, s. 99; 11 Statutes 1080. See also City of London Sewers Act, 1897 (60 & 61 Vict. c. exxxiii).

(*f*) London Government Act, 1899, s. 4; 11 Statutes 1227.

BATH CHAIRS

	PAGE		PAGE
LICENSING - - - -	6	LIGHTING - - - -	7
BYE-LAWS - - - -	6	EXCISE DUTY - - - -	8
MECHANICALLY-PROPELLED BATH CHAIRS - - - -	6	LONDON - - - -	8

See also titles : BICYCLES ;
HACKNEY CARRIAGES ;
MOTOR LICENCES ;
ROAD TRAFFIC.

Licensing.—Bath chairs or “invalid carriages” may be designed either to be hand drawn or horse drawn, or to be mechanically propelled. A bath chair, however drawn or propelled, used in standing or plying for hire in any street in a borough or urban district, is technically a “hackney carriage” within the definition of that expression in sect. 38 of the Town Police Clauses Act, 1847 (*a*), as incorporated with the P.H.A., 1875, by sect. 171 thereof (*b*), and as such requires to be licensed by the local authority in the case of boroughs and urban districts, and also in the case of rural districts where the rural authority have been invested with the powers under that section of an urban authority, by order of the Minister of Health under sect. 276 of the P.H.A., 1875 (*c*). [9]

Bye-laws.—The local authority are empowered by sect. 68 of the Act of 1847 (*d*) to make bye-laws for, *inter alia*, regulating the conduct of the proprietors and drivers of bath chairs plying within their district, and determining whether such drivers shall wear any and what badges, and for regulating the hours within which they may exercise their calling ; for fixing the stands of bath chairs and the distance to which they may be compelled to take passengers ; for fixing the rates or fares, as well for time as for distance, to be paid for the bath chair within the prescribed distance, and for securing the due publication of such fares ; and for securing the safe custody and re-delivery of any property accidentally left in bath chairs, and fixing the charges to be made in respect thereof. [10]

Mechanically-propelled Bath Chairs.—“Invalid carriages” are defined by the Road Traffic Act, 1930, sect. 2 (1) (*g*) (*e*), as mechanically-propelled vehicles the weight of which unladen does not exceed five hundredweight, and which are specially designed and constructed, and not merely adapted, for the use of persons suffering from some physical defect or disability, and are used solely for such persons. The general law relating to motor vehicles (as well as the law above

(*a*) 19 Statutes 44.

(*b*) 13 Statutes 696.

(*c*) See *post*, title HACKNEY CARRIAGES ; for s. 276, see 13 Statutes 741.

(*d*) 19 Statutes 53.

(*e*) 23 Statutes 609.

summarised) applies to invalid carriages as thus defined (*f*), subject to the exceptions hereunder set out.

A person who is sixteen years of age and under seventeen may drive an invalid carriage on the road (Road Traffic Act, 1930, sect. 9 (1), (2)) (*g*). Part II. of the Act of 1930, containing provisions relating to third party risks arising out of the use of motor vehicles, does not apply to invalid carriages (sect. 35 (5)) (*h*). The maximum speed limit permitted in the case of invalid carriages is twenty miles per hour (*i*). A driving licence limited to an invalid carriage may be granted to an applicant if the licensing authority are satisfied that he is fit to drive such a carriage, notwithstanding the fact that it appears from the declaration required to be made by an applicant for a licence to drive a motor vehicle that he is suffering from a disease or physical disability which ordinarily would preclude the authority from granting him a licence (sect. 5 (2) (a)) (*k*).

The overall width of an invalid carriage must not exceed seven feet two inches, and every such carriage must be equipped with an efficient braking system, the brakes of which act on at least two of the wheels of the vehicle, so designed and constructed that the application of the brakes shall bring the vehicle to rest within a reasonable distance. Further, the vehicle must be equipped with wings or other similar means to catch, as far as practicable, mud or water thrown up by rotation of the wheels (*l*). No invalid carriage may draw a trailer (*m*). The general regulations relating to identification marks and their exhibition on motor vehicles are modified in the case of invalid carriages (*n*).

A form of declaration for a licence and particulars of invalid carriages has been prescribed (*o*). [11]

Lighting.—The law relating to the lighting of invalid carriages is governed by the Road Transport Lighting Act, 1927 (*p*), in which “invalid carriage” is defined in similar terms to the definition which has already been quoted (sect. 15). Such vehicles must carry during “the hours of darkness” “a single lamp showing a white light visible to the front from a reasonable distance, and a lamp showing to the rear a red light visible from a reasonable distance” (sects. 1 (1) and 5 (1)) (*q*). As to the meaning of the expression “the hours of darkness,” see title BICYCLES, at p. 57, *post*. It is the duty of any person who causes or permits an invalid carriage to be on any road during the hours of darkness to provide the vehicle with lamps as above described (sect. 1 (1)) (*q*). [11A]

(*f*) See *post*, titles MOTOR LICENCES and ROAD TRAFFIC.

(*g*) 23 Statutes 618.

(*h*) *Ibid.*, 637.

(*i*) The Motor Vehicles (Variation of Speed Limit) Regulations, No. 2, 1931 (S.R. & O., 1931, No. 626), amending the Road Traffic Act, 1930, First Schedule, para. 1 (2); 24 Statutes 476.

(*k*) 23 Statutes 612.

(*l*) The Motor Vehicles (Construction and Use) Regulations, 1931 (S.R. & O., 1931, No. 4), Arts. 48—50; 23 Statutes 721.

(*m*) *Ibid.*, Art. 83; 23 Statutes 725.

(*n*) See the Road Vehicles (Registration and Licensing) Regulations, 1924 (S.R. & O., 1924, No. 1462), Art. 23 (2), and Fourth Schedule, r. 6, as amended by the Regulations of 1930 (S.R. & O., 1930, No. 277).

(*o*) *Ibid.*, First Schedule.

(*p*) 19 Statutes 100 *et seq.* See the Road Vehicles Lighting Regulations, 1929 (S.R. & O., 1929, No. 723), and the Provisional Amendment Regulations of July 23, 1933.

(*q*) 19 Statutes 100, 102.

Excise Duty.—The excise duty payable on mechanically-propelled invalid carriages (*r*) not exceeding five hundredweight in weight unladen is five shillings (*r*). [12]

London.—The Town Police Clauses Act, 1847, does not apply to the Metropolis, but a similar definition of "hackney carriage" to that in sect. 38 of that Act is contained in the London Hackney Carriage Act, 1831, sect. 4 (*s*), and in the London Hackney Carriages Act, 1843, sect. 2 (*t*). Bath chairs coming within the definition of "hackney carriage" must therefore be licensed under those Acts.

Otherwise the provisions relating to bath chairs already referred to apply to London. [13]

(*r*) Finance Act, 1920, Second Schedule; 16 Statutes 861.

(*s*) 19 Statutes 106.

(*t*) 19 Statutes 125.

BATHING

	PAGE		PAGE
RIGHTS OF BATHING ON THE SEA-		BYE-LAWS - - - -	9
SHORE - - - -	8	OFFENCES AND PENALTIES - -	11
PROVISION OF BATHING SHEDS AND		LONDON - - - -	11
LIFE-SAVING APPLIANCES -	9		

See also titles : BATHS AND WASHHOUSES ;
ESPLANADES, PROMENADES AND BEACHES.

Rights of Bathing on the Seashore.—In 1821 it was decided in the Court of King's Bench (one judge out of four dissenting) that there is no common law right for the King's subjects to bathe on the seashore or to pass over it for that purpose on foot or with horses and carriages (*a*). The existence of a common law right only was raised in the action, but the court recognised the possibility of establishing a right to bathe on the seashore by custom or prescription (*b*).

If a mere right to bathe along the shore has been established, by custom or prescription, this does not enable the persons availing themselves of that right to place bathing machines there. Where a piece of the shore had been leased by the Crown to a lessee, it was held that he had a right to maintain an action against a bathing-machine keeper who placed machines there after having obtained a licence from the

(*a*) *Blundell v. Catterall* (1821), 5 B. & Ald. 268; 44 Digest 77, 530; *Brinckman v. Matley*, [1904] 2 Ch. 318; 44 Digest 78, 591. The correctness of the decision in *Blundell v. Catterall* has been doubted; see Hall's "Essay on the Seashore," 3rd ed. (1888), printed in Moore, *Law of the Foreshore*, p. 833.

(*b*) "The right is claimed on the pleadings as founded, not on usage or custom, but upon the supposed general law only. . . . My opinion, therefore, on this case will not affect any right that has been or can be gained by prescription or custom either by individuals or by either the permanent or temporary inhabitants of any vill, parish or district" (*Blundell v. Catterall*, *supra*, per HOLROYD, J., at p. 289, and see the dictum of BAYLEY, J., at p. 306). In *Mace v. Philcox* (1864), 15 C. B. (N. S.) 600; 38 Digest 208, 430; ERLE, C.J., commenting on the decision in *Blundell v. Catterall*, said, at p. 612, "If you can lawfully get to the seashore, you may lawfully bathe there."

local authority which was empowered by local Act to license bathing-machines and make regulations for their use (*c*). [14]

Provision of Bathing Sheds and Life-saving Appliances.—Borough councils, U.D.Cs. and R.D.Cs. may provide bathing sheds or other conveniences on or at any place within their district which abuts upon the sea or a river, with all conveniences and necessary appliances, and may charge for the use thereof. This power is, however, only available if sect. 92 of the P.H.A. Amendment Act, 1907, has been declared to be in force in the borough or district, or in a contributory place in a rural district, by an order of the Local Government Board or of the Minister of Health (*d*).

If a similar order has been made declaring sect. 93 of the same Act to be in force, the local authorities above mentioned may provide life-saving appliances in any place in their district where they consider that such appliances are likely to be of use (*e*). They may also enforce, by bye-laws, the provision of life-saving apparatus by persons providing accommodation for public bathing (*f*). [15]

Bye-laws.—The councils of boroughs and urban districts are empowered to make bye-laws for the regulation of bathing from any parts of the seashore or of the strand of any river within their area which are used for public bathing, for the following purposes (*g*) :

- (1) for fixing the stands of bathing machines on the seashore or strand, and the limits within which persons of each sex shall be set down for bathing and within which persons shall bathe ;
- (2) for preventing any indecent exposure of the persons of the bathers ;
- (3) for regulating the manner in which the bathing machines shall be used, and the charges to be made for the same ; and
- (4) for regulating the distance at which boats or vessels let to hire for the purpose of sailing or rowing for pleasure shall be kept from persons bathing within the prescribed limits.

These powers may be exercised by an R.D.C. if they have been invested with the relevant powers of an U.D.C. by an order of the Local Government Board or of the Minister of Health (*h*).

The power to make bye-laws under these provisions, being expressly limited to places on the seashore and the strands of rivers, was considered by the Local Government Board to be further limited to the regulation of public bathing from bathing machines only, by reason of the marginal note to sect. 69 of the Town Police Clauses Act, 1847, which reads "Bathing Machines" (*i*), though this decision has been criticised.

(*c*) *Mace v. Philcox* (1864), 15 C. B. (N. S.) 600 ; 38 Digest 208, 430.

(*d*) P.H.A. Amendment Act, 1907, ss. 3, 13, 92 ; 13 Statutes 911, 915, 946.

(*e*) *Ibid.*, ss. 3, 13, 93 ; 13 Statutes 911, 915, 946. The provisions of s. 93 are general and are not limited to the safeguarding of the lives of bathers. As to the provision of lifeboats, etc., by local authorities to which the provisions of the Harbours, Docks and Piers Clauses Act apply, see title HARBOURS.

(*f*) See *infra*.

(*g*) Town Police Clauses Act, 1847, s. 69 ; 13 Statutes 604 ; incorporated with the P.H.A., 1875, by s. 171 thereof ; 13 Statutes 696.

(*h*) P.H.A., 1875, s. 276 ; 13 Statutes 741. An order under this section is unnecessary if an order is made declaring s. 92 of the P.H.A. Amendment Act, 1907, to be in force in the district (see *post*).

(*i*) 13 Statutes 604. The wording of the marginal note is altered in The Statutes Revised.

Extended powers to make bye-laws are given to the councils of boroughs, urban districts and rural districts by the P.H.A. Amendment Act, 1907, which removes the limitations above mentioned, and allows any such council to make bye-laws with regard to any public bathing whether from bathing machines or not, for any of the purposes mentioned in sect. 69 of the Town Police Clauses Act, 1847 (*j*), and also for the purpose of regulating the hours of bathing and enforcing the provision and maintenance of any life-saving apparatus or other means of protecting bathers from danger by persons providing accommodation for public bathing (*k*).

These powers are only available if the sect. has been declared to be in force in the borough or district, or in a contributory place in a rural district, by an order of the Local Government Board or the Minister of Health (*l*).

As from June 1, 1934, the provisions with respect to bye-laws contained in the L.G.A., 1933, Part XII., extend to bye-laws made under either of the enactments above-mentioned, by reason of sect. 250 (1) of that Act, which applies the provisions of that section to bye-laws to be made by a local authority by virtue of the P.H.A., 1875 to 1932. Sects. 250—252 of the L.G.A., 1933, consist of a reproduction with amendments of sects. 182—186 of the P.H.A., 1875 (*m*), most of which are repealed by the Act of 1933. The P.H. (Confirmation of Bye-laws) Act, 1884 (*n*), had provided that bye-laws as to public bathing under sect. 69 of the Town Police Clauses Act, 1847, as incorporated with the P.H.A., 1875, and some other classes of bye-laws, should be deemed to require the confirmation of the Local Government Board (now the Minister of Health) and not to require any other confirmation, allowance or approval. This Act is not repealed by the L.G.A., 1933, and the transfer to the M. of H. of the power of confirmation declared by the Act of 1884 to vest in the Local Government Board, is preserved by the proviso to sub-sect. (10) of sect. 250 of the L.G.A., 1933.

In order to facilitate the granting of the approval of the Minister of Health to bye-laws made by a local authority, it is desirable that a draft of the proposed bye-laws should be sent to the Minister of Health for preliminary approval. A form for this purpose is supplied by the Ministry on application. The bye-laws should so far as possible follow the model form, and any deviations therefrom should be indicated.

Bye-laws may be made to apply to the regulation of bathing from both public and private property, but the powers given to a local authority to make bye-laws for regulating bathing do not authorise them to license bathing machines, sheds or tents to be used on private property where no right to place such machines or erections has been established by custom or prescription, notwithstanding the fact that the custom of bathing without machines may have been established in such places (*o*).

(*j*) 13 Statutes 604.

(*k*) P.H.A. Amendment Act, 1907, ss. 13, 92; 13 Statutes 915, 946. Before the passing of this Act, bye-laws for preventing indecent exposure at places where bathing machines were not used were made in some areas under the powers to make bye-laws for good rule and government which were conferred on boroughs and county councils by the Municipal Corpn. Act, 1882, s. 23; 10 Statutes 584; and the L.G.A., 1888, s. 16; 10 Statutes 698; both of which sections are now repealed and re-enacted by the L.G.A., 1933, s. 249. The repeal does not, however, affect the validity of existing bye-laws (*ibid.*, s. 307 (1), proviso (i)).

(*l*) P.H.A. Amendment Act, 1907, ss. 3, 13; 13 Statutes 911, 915.

(*m*) 13 Statutes 704—706.

(*n*) 13 Statutes 801.

(*o*) *Mace v. Philcox* (1864), 15 C. B. (N. S.) 600; 38 Digest 208, 430.

Local authorities should not, of course, promulgate bye-laws in such a way as to encourage or invite the public to encroach upon the rights of private owners of foreshore, strands of rivers or other property without permission (*p*).

Bye-laws prescribing charges to be made by bathing-machine proprietors must be limited to charges for the use of machines and cannot be made to cover charges for the use of such articles as towels or bathing costumes (*q*).

Model bye-laws for the regulation of public bathing, accompanied by an explanatory memorandum, were issued by the Minister of Health in 1929. The model bye-laws are framed under the provisions of both of the above-mentioned Acts authorising the making of bye-laws, but they relate to public bathing from the seashore and river strands only. They do not provide for the compulsory use of bathing machines, tents or other erections because in the opinion of the Minister the statutory power does not seem apt for the making of a bye-law to that effect, nor do they provide for the prevention of mixed bathing, or for regulating charges for bathing machines. [16]

Offences and Penalties.—As to legal proceedings and penalties for breach of bye-laws, see the provisions of the P.H.A., 1875, and the L.G.A., 1933 (*r*).

It is an indictable offence at common law for persons bathing in the sea to undress and expose themselves near inhabited houses or near to a public way, and proof of a usage or custom so to bathe is no defence (*s*).

In relation to water undertakings to which sect. 61 of the Waterworks Clauses Act, 1847 (*t*), applies, a person bathing in a stream, reservoir, aqueduct or other waterworks is liable to a penalty, payable to the owners of the undertaking, not exceeding £5 (*u*). [17]

London.—The provisions of the Public Health Acts referred to above do not apply to London, nor do any similar provisions seem to have been included in any public general Act applying to London. [18]

(*p*) In *Conyngham (Marquess) v. Broadstairs and St. Peter's R.D.C.* (1911), *Times Newsp.*, July 22, the plaintiff claimed an injunction to restrain the council from exhibiting notices intimating to the public that they had a right to bathe on foreshore belonging to him. The defendants gave an undertaking that they would exhibit, with their bye-laws, a notice stating that nothing therein should be deemed to authorise any person to bathe on the foreshore in question without the consent of the owner.

(*q*) *Parker v. Clegg* (1903), 2 L. G. R. 608; 38 Digest 208, 432.

(*r*) P.H.A., 1875, s. 183 and the relevant portions of Part VII.; 13 Statutes 705, 730; L.G.A., 1933, ss. 251, 252; 26 Statutes 442. See also P.H.A. Amendment Act, 1907, s. 6; 13 Statutes 913.

(*s*) *R. v. Cruden* (1809), 2 Camp. 89; 15 Digest 747, 8055; *R. v. Reed* (1871), 12 Cox, C. C. 1; 15 Digest 747, 8056.

(*t*) 20 Statutes 206.

(*u*) 20 Statutes 206.

BATHING HUTS

See BATHING.

BATHS AND WASHHOUSES

	PAGE		PAGE
PRELIMINARY OBSERVATIONS	12	NATURE OF ACCOMMODATION AND	
POWERS OF THE MINISTER OF		USE OF BATHS, ETC.	19
HEALTH	13	Baths	19
ADOPTION OF ACTS	14	Washhouses	20
Boroughs and Urban Districts	14	SUPPLY OF WATER AND GAS	20
Rural Parishes	14	OFFICERS	21
Rural Districts	14	BYE-LAWS	22
EXECUTION OF ACTS	14	PROCEEDINGS AGAINST OFFENDERS	24
ACQUISITION AND DISPOSAL OF		CHARGES	25
LAND	15	INCOME AND EXPENDITURE	26
ACQUISITION OF EXISTING BATHS		ACCOUNTS AND AUDIT	26
AND WASHHOUSES	17	SALE OF BATHS AND WASHHOUSES	26
PROVISION OF BATHS, WASH-		BORROWING POWERS	26
HOUSES, ETC.	18	LONDON	28
CONTRACTS	18		

See also titles : ADOPTIVE ACTS ;
BATHING ;
ENTERTAINMENTS, PROVISION OF ;
MUSIC, SINGING AND DANCING.

Preliminary Observations.—The law with regard to the establishment, maintenance and use of public baths and washhouses, drying grounds, open bathing places, swimming pools and covered swimming baths by local authorities, is contained in a series of Acts of Parliament known as the Baths and Washhouses Acts, 1846—1925 (*a*).

The Acts are adoptive, and are not in force in any district until they have been adopted in the prescribed manner (*b*). The powers conferred by these statutes comprise the provision of the establishments above mentioned, the regulation of the manner in which they are to be used, the imposition of charges for their use, and the making of bye-laws for their management and regulation.

The primary object of the legislature as expressed in the preamble to the Act of 1846 was to encourage the provision of baths and washhouses and open bathing places in towns and populous districts for the health, comfort and welfare of the inhabitants thereof (*c*). The

(*a*) The collective title is given by the P.H.A., 1925, s. 1 (2) ; 13 Statutes 1115. The Acts are : the Baths and Washhouses Act, 1846 ; 13 Statutes 519 ; the Baths and Washhouses Act, 1847 ; 13 Statutes 598 ; the Baths and Washhouses Act, 1878 ; 13 Statutes 793 ; the Baths and Washhouses Act, 1882 ; 13 Statutes 797 ; the Baths and Washhouses Act, 1896 ; 13 Statutes 878 (applies to London only) ; the Baths and Washhouses Act, 1899 ; 13 Statutes 880 (does not apply to London) ; and the P.H.A., 1925, Part IX. ; 13 Statutes 1153. The Acts of 1846, 1847 and 1878 are to be construed and carried into execution as one Act (Baths and Washhouses Act, 1878, s. 2) ; 13 Statutes 794. The Baths and Washhouses Act, 1882, is to be read as one with the Act of 1846 (s. 1) ; 13 Statutes 797. Part IX. of the P.H.A., 1925, is to be construed as one with the Baths and Washhouses Acts, 1846 to 1899 (s. 1 (3)).

(*b*) See *post*, "Adoption of Acts."

(*c*) "The scheme of the Act appears to be to give washing facilities to persons who are not able to provide for themselves places where they may cleanse themselves or their clothes" (*A.-G. v. Fulham Corpn.*, [1921] 1 Ch. 440, *per* SARGANT, J., at p. 450 ; 38 Digest 207, 429).

enacting part of the statute, however, does not limit the powers thereby given to towns and populous places, but extends them to all towns and parishes; nor does the Act limit the use of the accommodation to the inhabitants of the town or parish in which it is provided.

The earlier Acts are antiquated, and many of their provisions are out of date and difficult to construe in conjunction with more modern legislation, while frequent amendments have rendered the law unnecessarily complicated. [19]

The expression "local authority" is used in Part IX. (Baths and Washhouses) of the P.H.A., 1925 (*d*), to designate any authority having power to carry into execution the Baths and Washhouses Acts, and that expression is used in the same sense in this article.

The Towns Improvement Clauses Act, 1847, also contains a group of sections relating to baths and washhouses (*e*) which may be applied by special Act if such Act contains a declaration that those sections are incorporated therewith (*f*).

As the provisions of the Towns Improvement Clauses Act, 1847, are in force only in a few boroughs and districts to which they have been applied by local Acts, they are not dealt with in detail in this article. The Act authorises the provision of public baths and washhouses, public open bathing places and public drying grounds, but does not authorise the provision of covered swimming baths.

The main difference in principle between the Towns Improvement Clauses Act and the Baths and Washhouses Acts is that provision can only be made under the former Act for the inhabitants of the district (*g*), whereas the Baths and Washhouses Acts contain no such limitation.

The Baths and Washhouses Acts are not incorporated with the P.H.As. Sect. 10 of the P.H.A., 1875 (*h*), provides for the adoption of the Acts in a borough or urban district by the council acting as the urban authority, and, where the Acts are in force, transfers to the council all the powers, duties and liabilities of the commissioners or other persons acting in the execution of the Acts. Formerly under sect. 5 of the Act of 1846 (*i*) the Acts were to be adopted in a parish not within a borough by the vestry of the parish. [20]

Powers of the Minister of Health.—The exercise of some of the functions of local authorities under the earlier Baths and Washhouses Acts was subject to the approval of a Secretary of State, the Treasury or the Poor Law Commissioners. The powers of the Secretary of State under the Acts were transferred to the Local Government Board in 1871 (*j*), and those of the Treasury, so far as they relate to the borrowing of money, were transferred to the same Board in 1872 (*k*), the remainder of the Treasury powers being transferred to the Board in 1906 (*l*).

(*d*) See s. 85 (1); 13 Statutes 1153.

(*e*) Ss. 136—141; 13 Statutes 576, 577.

(*f*) S. 1; 13 Statutes 531.

(*g*) S. 136; 13 Statutes 576.

(*h*) 13 Statutes 630. See "Borrowing Powers," *post*, p. 26.

(*i*) 13 Statutes 521.

(*j*) Local Government Board Act, 1871, s. 2 and Schedule, Part I.; 3 Statutes 390, 391.

(*k*) P.H.A., 1872, s. 34, repealed and re-enacted by the P.H.A., 1875, s. 343 and Sched. V., Part III.; 13 Statutes 765, 781. See also Baths and Washhouses Act, 1878, s. 9; 13 Statutes 794.

(*l*) Local Authorities (Treasury Powers) Act, 1906; 10 Statutes 842.

The powers of the Poor Law Commissioners were transferred to the Poor Law Board in 1847 (*m*), and from that Board to the Local Government Board in 1871 (*mm*).

The powers of the Local Government Board under the Acts were in 1919 transferred to the Minister of Health (*n*). [21]

Adoption of Acts.—The Baths and Washhouses Acts may be adopted for any borough or other urban district, or for any rural parish, and if adopted, are in force in the whole of the area. The Acts, if adopted, must be adopted in their entirety, though the extent to which the powers so acquired are exercised, if they are exercised at all, is entirely in the discretion of the local authority. [22]

Boroughs and Urban Districts.—In a borough or urban district the Baths and Washhouses Acts may be adopted by the council thereof (*o*). A resolution of the council adopting the Acts is all that is necessary for the purpose, and no approval by the Minister of Health or other authority is necessary. [23]

Rural Parishes.—In a rural parish the parish meeting has the exclusive power of adopting the Acts (*p*). The usual provisions with regard to holding parish meetings, now contained in sect. 77 of, and Part VI. of the Third Schedule to, the L.G.A., 1933 (*pp*), must be observed. Under the proviso to para. 2 (2) of Part VI. of the Third Schedule not less than fourteen days' notice of the meeting must be given, and the resolution must be passed by a majority of at least two-thirds of the electors voting. If a poll is demanded and taken, a like majority of two-thirds of the electors voting is necessary (*q*).

The approval by the Minister of Health of the resolution of adoption is necessary before the provisions of the Acts come into operation in the parish (*r*). [24]

Rural Districts.—In a rural district the area of which is co-extensive with that of a rural parish, the parish meeting is the authority which has power to adopt the Acts, notwithstanding that the R.D.C. act as the parish council for the parish (*s*). [25]

Execution of Acts.—In a borough the borough council is the authority for the execution of the Baths and Washhouses Acts (*t*).

In an urban district, the district council is the authority for the execution of the Acts (*u*).

(*m*) Poor Law Board Act, 1847 (10 & 11 Vict. c. cix).

(*mm*) Local Government Board Act, 1871, s. 2 and Schedule, Part I.; 3 Statutes 390, 391.

(*n*) M. of H. Act, 1919, s. 3 (1) (a), (5), Sched. I.; 3 Statutes 417, 418, 421; S.R. & O., 1919, No. 850.

(*o*) Baths and Washhouses Act, 1846, s. 1; 13 Statutes 520; P.H.A., 1875, ss. 6, 10; 13 Statutes 628, 630.

(*p*) L.G.A., 1894, s. 7 (1); 10 Statutes 779.

(*pp*) 26 Statutes 348, 501.

(*q*) Baths and Washhouses Act, 1846, s. 5; 13 Statutes 521; L.G.A., 1894, s. 7 (2); 10 Statutes 779.

(*r*) Baths and Washhouses Act, 1846, s. 5, *supra*. The provision in s. 7 (1) of the L.G.A., 1894, *supra*, that the parish meeting shall *exclusively* have the power of adoption, does not take away the necessity for the Minister's approval.

(*s*) See "Execution of Acts," *infra*.

(*t*) Baths and Washhouses Act, 1846, s. 1 and *passim*; 13 Statutes 520; P.H.A., 1875, s. 10; 13 Statutes 630. S. 3 of the Baths and Washhouses Act, 1846, which provided that in a borough the Act should be carried into execution in accordance with the laws relating to municipal corporations, was repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

(*u*) P.H.A., 1875, s. 10; 13 Statutes 630. The L.G.A., 1933, s. 307, Sched. XI.,

In a rural district the Minister of Health may by order confer upon the council the functions of an U.D.C. under the Acts (a), but as in rural districts the Acts are administered, in general, by parish councils, it is unlikely that any such order would be made.

The parish council of a rural parish is the executive authority (b) except where the parish is co-extensive with a rural district and the R.D.C. act as the parish council for the parish (c).

If the Acts should be adopted for a rural parish not having a separate parish council, the parish meeting would appoint baths and washhouses commissioners, who would be the authority for the execution of the Acts, but no instance is known of commissioners of this kind acting for a rural parish. The better course would be for an application to be made to the county council for an order conferring on the parish meeting power to execute the Acts (d). Provision is made in the Baths and Washhouses Act, 1846, with regard to resignation of commissioners, filling of vacancies, meetings and quorum of meetings of commissioners, and the keeping of minutes (e), but as no such commissioners are believed to exist, it is considered unnecessary to deal in detail with their powers and duties.

In areas in which the Baths and Washhouses Acts have been adopted, the local authorities may concur in appointing a joint committee for the execution of their powers thereunder (f). In practice, this course will no doubt be preferred to action under sect. 19 of the Act of 1846, which enabled the vestries of two or more parishes to combine for the execution of the Act. The accounts of a joint committee are subject to audit by the district auditor, except in cases where the constituent local authorities are councils of boroughs whose general accounts are not subject to such audit (g). If the accounts are not subject to district audit they are to be audited by the borough auditors of such one of the appointing authorities as may be agreed upon (h). [26]

Acquisition and Disposal of Land.—Councils of boroughs, urban districts and parishes may by agreement acquire land, including any interest in land or any easement or right in, to or over land, either within or without their area, by purchase, lease or exchange, for the purposes of the Baths and Washhouses Acts (i).

Councils of boroughs and urban districts may, with the consent of

Part IV., repeals either wholly or in part ss. 9 to 15, 21, 23, 24, 26 and 31 of the Baths and Washhouses Act, 1846, "except so far as relates to commissioners appointed under the Act." The effect of these conditional repeals would appear to be to limit the application of the provisions in question to commissioners for public baths and washhouses solely, notwithstanding the fact that in urban districts (other than boroughs) where the Baths and Washhouses Acts were in force at the date of the passing of the P.H.A., 1875, the powers and duties of the district council are by s. 10 of that Act expressed to be those exercisable by or attaching to commissioners under those Acts.

(a) L.G.A., 1933, s. 272 ; 26 Statutes 451. See also s. 43 (3), referred to *infra*.

(b) L.G.A., 1894, s. 7 (5), (7) ; 10 Statutes 779.

(c) L.G.A., 1933, s. 43 (3) ; 26 Statutes 327.

(d) *Ibid.*, s. 273. A parish meeting would no doubt experience difficulties in executing the Acts, though some provisions tending to facilitate the discharge of their functions are contained in s. 47 of the L.G.A., 1933 ; 26 Statutes 328.

(e) Baths and Washhouses Act, 1846, ss. 7—11 ; 13 Statutes 522.

(f) L.G.A., 1933, s. 91 ; 26 Statutes 355. As to powers of joint committees constituted under this section, see title JOINT BOARDS AND COMMITTEES.

(g) L.G.A., 1933, s. 293 (1) ; 26 Statutes 461.

(h) *Ibid.*, s. 93 (2) ; *ibid.*, 356.

(i) *Ibid.*, ss. 157, 167 ; *ibid.*, 391, 398. For definition of the word "land," see *ibid.*, ss. 176, 305.

the Minister of Health, appropriate, for the purposes of the Acts, any land belonging to them and not required for the purposes for which the land was acquired or has since been appropriated (*k*).

The question whether the council of a borough or urban district can be authorised to purchase land compulsorily for the purposes of the Acts has had a curious history. Sect. 4 of the Baths and Washhouses Act, 1847 (*l*), incorporated with the Acts of 1846 and 1847 the Lands Clauses Consolidation Act, 1845, subject to a proviso that the council and commissioners respectively should not purchase or take any lands otherwise than by agreement, but in this section the words "council and" and "respectively" are repealed (except as to London) by the L.G.A., 1933.

It has already been mentioned that in boroughs and urban districts, the powers of baths and washhouses commissioners were transferred to the borough council or U.D.C. by sect. 10 of the P.H.A., 1875. The definition of "Sanitary Acts" in sect. 4 of that Act covered the Baths and Washhouses Acts, 1846 and 1847. By sect. 233 of the P.H.A., 1875 (*m*), such councils were authorised to borrow not only expenses incurred in the execution of the Act of 1875, but also in the execution of the Sanitary Acts, thus bringing loans for public baths, etc., under the P.H.As. Although sects. 175, 176 of the Act of 1875 (*n*), relating to the purchase of lands for the purposes of that Act, contained no similar reference to the Sanitary Acts, the Law Officers of the Crown advised the Local Government Board some few years after the passage of the Act of 1875, that a compulsory purchase of land for public baths and washhouses could be authorised by a provisional order made under sect. 176 of the Act (*o*). That sect. is repealed by the L.G.A., 1933, and replaced by sect. 160 of that Act (*oo*). By sub-sect. (2) of sect. 159 of the Act, the council of a borough or district may be authorised to purchase land compulsorily, for any of the purposes of the P.H.As., 1875 to 1932, whether situate within or without their area. It would seem, therefore, that the purposes of the Baths and Washhouses Acts may still be regarded as purposes of the P.H.As., and a compulsory purchase of land may be authorised by a provisional order under sect. 160 of the Act of 1933, especially in view of the repeal already mentioned, in its application to councils, of the restriction in sect. 4 of the Baths and Washhouses Act, 1847.

Compulsory powers to acquire land for the purposes of the Baths and Washhouses Acts may be given to a parish council by order of the county council approved by the Minister of Health, and if the county council refuse to make such an order the Minister of Health may do so (*p*).

In relation to the acquisition of land by agreement by local authorities (other than commissioners), for the purposes of their functions under any public general Act, the Lands Clauses Acts are incorporated with the L.G.A., 1933, "except the provisions relating to the acquisition

(*k*) L.G.A., 1933, s. 163; 26 Statutes 396. See title APPROPRIATION OF LAND. The Baths and Washhouses Act, 1846, s. 24, which authorised a parish council to appropriate parish lands within the parish for the purposes of the Acts is repealed except as to commissioners by the L.G.A., 1933.

(*l*) 13 Statutes 599.

(*m*) 13 Statutes 722.

(*n*) 13 Statutes 699, 700.

(*o*) For examples of such a provisional order, see the Willesden Order, 1930, printed in the Schedule to the local Act, 20 & 21 Geo. 5, c. clv., and the Leicester Order, 1931, printed in the local Act, 21 & 22 Geo. 5, c. xxxvi.

(*oo*) 26 Statutes 393.

(*p*) S. 168. See title COMPULSORY PURCHASE OF LAND, "Compulsory Orders."

of land otherwise than by agreement" (g). Sects. 127—132 of the Lands Clauses Consolidation Act, 1845 (r), relating to the sale of superfluous land, and sects. 150, 151 of that Act (s) relating to the deposit and inspection of copies of the special Act, are also excepted from incorporation with the Act of 1933.

The council of a borough or urban district are also authorised, with the consent of the M. of H., to acquire by agreement, whether by way of purchase, lease or exchange, land for the purpose of public baths and washhouses, notwithstanding that the land is not immediately required for that purpose (t). Any such land may be either within or without the borough or urban district.

The general power of letting land conferred on local authorities (other than parish councils) and on parish councils by the L.G.A., 1933 (u), and also the general power of selling or exchanging land (a), will extend to land acquired under the Baths and Washhouses Acts, thus supplementing the power of selling baths, washhouses or bathing places referred to on p. 26, *post*.

The Commissioners of Crown Lands may sell or lease Crown lands for public baths, where this will be for the development, improvement or general benefit of the land (b).

If any land taken by a local authority for baths and washhouses is subject to any rentcharge in lieu of tithe, or to any corn rent, or to any other money payment charged on the land by virtue of any Act of Parliament in lieu of tithes, the tithe or other payment is to be redeemed before the land is applied to the purposes for which it is acquired (c).

The application for redemption is to be made to the Minister of Agriculture and Fisheries as successor to the Tithe Commissioners mentioned in the Tithe Act, 1878 (d).

No penalty is imposed in case of non-compliance with these provisions, but if no application for redemption is made by the local authority, the Minister may order redemption on the application of the owner of the tithe rentcharge or other payment (e). [27]

Acquisition of Existing Baths and Washhouses.—Baths and washhouses in a borough, district or parish or its immediate neighbourhood, whether built before or after the passing of the Baths and Washhouses Act, 1846, may be purchased or taken on lease by an authority and appropriated for the purposes of the Acts, with such additions and alterations as the local authority consider necessary (f), but in the case of acquisition by commissioners the consent of the parish meeting is required (g).

(g) L.G.A., 1933, s. 176 ; 26 Statutes 403.

(r) 2 Statutes 1158—1160.

(s) *Ibid.*, 1164.

(t) L.G.A., 1933, s. 158 ; 26 Statutes 392.

(u) *Ibid.*, ss. 164, 169 ; *ibid.*, 397, 399.

(a) *Ibid.*, ss. 165, 170 ; *ibid.*, 397, 400.

(b) Crown Lands Act, 1927, s. 10 ; 3 Statutes 335.

(c) Tithe Act, 1878, ss. 1—3, 5, 6 ; 19 Statutes 552, 553 ; Tithe Rentcharge Redemption Act, 1885, s. 2 ; 19 Statutes 559 ; Tithe Act, 1918, s. 4 ; 19 Statutes 575 ; Tithe Act, 1925, s. 19 ; 19 Statutes 591.

(d) Settled Land Act, 1882, s. 48 ; Board of Agriculture Act, 1889, s. 2 (1) and Sched. I, Part II. ; 3 Statutes 401, 405 ; Board of Agriculture and Fisheries Act, 1903, s. 1 (1) ; 3 Statutes 408 ; M. of A. Act, 1919, s. 1 ; 3 Statutes 451.

(e) Tithe Act, 1925, s. 19 ; 19 Statutes 591.

(f) Baths and Washhouses Act, 1846, s. 27 ; 13 Statutes 527 ; Baths and Washhouses Act, 1882, s. 2 ; 13 Statutes 797.

(g) Baths and Washhouses Act, 1846, s. 27 ; 13 Statutes 527 ; L.G.A., 1894, ss. 7 (3), 19 (4) ; 10 Statutes 779, 790.

The trustees of any such baths and washhouses which may have been provided by private subscription or otherwise are authorised to sell or to lease them or to make over their management to the local authority, if the local authority concur, and the baths and washhouses thereupon become subject to the provisions of the Acts as if originally built or provided by the local authority and vest in them (*h*). [28]

Provision of Baths, Washhouses, etc.—On the lands purchased, rented, appropriated or given, buildings may be erected for the purposes of public baths and washhouses with or without drying grounds, and covered swimming baths, or open bathing places may be provided, and any existing buildings on the lands may be adapted for use as baths or washhouses. Any of these may be altered, enlarged or improved as occasion requires and furnished and supplied with the requisite fittings and conveniences (*i*). [29]

Contracts.—Commissioners for Public Baths and Washhouses may contract for the building, alteration and repair and furnishing of baths and washhouses, open bathing spaces and covered swimming baths, and for all other things necessary for their maintenance. The contract must specify the several things to be done, the prices, the time for performance and the penalty for non-performance. Contracts or copies thereof must be entered in a book kept for that purpose. In the case of a contract above the value of £100, fourteen days' notice must be given by advertisement in a public newspaper of the intention to enter into the contract, and of the time and place for the delivery of tenders. The commissioners need not accept the lowest tender (*k*). These requirements will not extend to local authorities outside London, because the L.G.A., 1933, repeals sect. 26 of the Baths and Washhouses Act, 1846, except so far as it relates to commissioners appointed under that Act, but as this repeal is not included in Part V. of the Eleventh Schedule to the Act, it does not extend to London.

Any contract for the purposes of baths and washhouses is, after June 1, 1934, entered into by the council of a borough or urban district, or by a parish council, under sect. 266 of the L.G.A., 1933. The requirements with which contracts should comply are governed by standing orders made by the council (*l*), and in the case of contracts for the supply of goods or materials, or the execution of works, the standing orders must provide for the publication of notice of the intention to enter into a contract, and the invitation of tenders, subject to such exceptions as may be allowed by the standing orders. A person entering into a contract is not, however, bound to inquire whether the standing orders have been complied with, and all contracts, if otherwise valid, are to have full force and effect, notwithstanding that the appropriate standing orders have not been complied with (*m*). [30]

(*h*) Baths and Washhouses Act, 1846, s. 27; 13 Statutes 527.

(*i*) *Ibid.*, s. 25; Baths and Washhouses Act, 1878, s. 3; 13 Statutes 526, 794.

(*k*) Baths and Washhouses Act, 1846, s. 26; 13 Statutes 527. These requirements are, however, wholly or in the main directory and not mandatory, and contracts made without full compliance with the provisions of s. 26 of the Act of 1846 may nevertheless be enforceable by either party. Cf. *Nowell v. Worcester Corpn.* (1854), 9 Exch. 457; 33 Digest 37, 200; *Soothill Upper U.D.C. v. Wakefield R.D.C.*, [1905] 2 Ch. 516; 33 Digest 37, 199.

(*l*) L.G.A., 1933, s. 266; 26 Statutes 447.

(*m*) *Ibid.*, s. 266 (2), proviso.

Nature of Accommodation and use of Baths, etc.—The nature of the accommodation which may be provided in baths and washhouses established under the Acts is not exhaustively defined.

When baths and washhouses have been established they are available for general public use and although they may be divided into classes with differential charges the Acts do not allow a local authority to discriminate between inhabitants of their district and other persons.

Baths.—The baths which may be provided by the local authority include ordinary baths and shower baths of cold or warm water, open bathing places, and covered swimming baths (*n*). The Acts do not specify the nature of the water to be used, and the baths may be either of fresh or salt water. Vapour baths may also be provided (*o*).

The inclusion of vapour baths in the Schedule to the Act of 1847 would appear to indicate that there is nothing to prevent the provision or purchase under the Acts of baths in the nature of Turkish baths, if this class of bath be needed in the district. Possibly, however, some of the accommodation usually associated with Turkish baths provided by private enterprise might not come within the Acts. Medicinal baths would appear to be outside the purview of the Acts.

The local authority may provide, for the convenience of those who use the baths, towels, bathing costumes and soap; and generally, whatever may be fairly regarded as incidental to the proper carrying on of any establishment authorised by the legislature, may be provided or done.

Baths of any number of different classes may be provided, but the number of baths for the labouring classes in any building or buildings provided by or under the management of the local authority must in all cases be not less than twice the number of baths of any higher class or classes in the same building or buildings (*p*).

A swimming bath may be closed from the beginning of October to the end of April, and while it is so closed the local authority have the right to use or to let it for such purposes as they may in their absolute discretion think proper (*q*). The discretion so given, however, is subject to the following conditions, namely, that if concerts or entertainments are provided in the baths by the council or the commissioners themselves (*qq*), no stage play, or performance in the nature of a variety entertainment may be provided, nor shall any cinematograph film be shown unless such film is illustrative of questions of health or disease. Further, no scenery or theatrical costumes or scenic or theatrical accessories are to be used (*r*).

If, however, the bath is let for the public performance of stage plays, for public music or for public music and dancing, the appropriate licence for such user must be obtained. In like manner, if it is used for cinematograph exhibitions a licence for such use must be obtained, or if the exhibitions are of an occasional or exceptional character, the notice prescribed by the Cinematograph Act, 1909, must be given.

(*n*) Baths and Washhouses Act, 1846, s. 25; 13 Statutes 526; Baths and Washhouses Act, 1847, s. 7 and Schedule; 13 Statutes 599, 600 (repealed as from the date the local authority authorise a scale of charges under the Act of 1925, by P.H.A., 1925, ss. 9, 85 (1); 13 Statutes 1118, 1153); Baths and Washhouses Act, 1878, ss. 3, 4; 13 Statutes 794.

(*o*) Act of 1847, *supra*, Schedule.

(*p*) Baths and Washhouses Act, 1846, s. 36; 13 Statutes 530.

(*q*) P.H.A., 1925, s. 87 (1); 13 Statutes 1154.

(*qq*) See now *A.-G. v. Eastbourne Corpn.* (1934), 78 Sol. Jo. 192.

(*r*) Ss. 56 (1), 87 (1); 13 Statutes 1154, 1139.

Conditions attached to any licence and regulations made or imposed under sect. 7 (2) of the Cinematograph Act are to apply notwithstanding anything contained in bye-laws made by the local authority. The local authority are themselves responsible for any breach of conditions attached to the grant of a music or dancing licence (s). [31]

Washhouses.—The provision to be made for washing may include all conveniences for washing and drying clothes and other articles (t). The council or commissioners are not, however, entitled to carry on in their washhouses any enterprise which involves the total or partial washing of clothes for others, as distinguished from the provision of facilities for enabling others to come to the washhouse to wash their clothes (u).

As in the case of baths, different classes of washing-tubs or troughs may be provided, but the number for the labouring classes in any washhouse or washhouses under the management of the same authority is to be at least twice the number of any higher class of tub or trough in the same washhouse or washhouses (a). [32]

Supply of Water and Gas.—Water, gas and canal companies and bodies and persons having the management of water supplies and gasworks are empowered in their discretion to supply water or gas to public baths, washhouses and open bathing places, either without charge or on favourable terms (b).

Borough and district councils may construct and use works for the supply of water to their baths and washhouses, even in the district of a water company able and willing to give a supply (c). They may also supply water from their waterworks to any public baths and washhouses on agreed terms. They have also power to construct such works as they think fit for the free supply of water to any public baths and washhouses (d).

Owners of waterworks to which sect. 37 of the Waterworks Clauses Act, 1847 (e), applies, must supply water from any pipe to which a fireplug is fixed, to baths and washhouses which are established for the free use of the inhabitants or paid for out of the general rate levied

(s) S. 87 (4); 13 Statutes 1154; Baths and Washhouses Act, 1899, s. 2; 13 Statutes 880; Cinematograph Act, 1909, ss. 2, 7; 19 Statutes 352, 354. In the area situate outside but within twenty miles of the cities of London and Westminster, except such part of that area as lies within the administrative counties of London and Middlesex, the granting of music and dancing licences is governed by the Home Counties (Music and Dancing) Licensing Act, 1926; 19 Statutes 363. In the administrative county of Middlesex, the Music and Dancing Licences (Middlesex) Act, 1894; 19 Statutes 349; applies. Beyond these areas, in any districts where s. 51 of the P.H.A. Amendment Act, 1890; 13 Statutes 843; is in operation, licences will be granted under the provisions of that section, while in other areas the county council are empowered to grant licences by virtue of s. 2 of the Baths and Washhouses Act, 1899, *supra*. See title THEATRES.

(t) Baths and Washhouses Act, 1847, s. 5, Schedule; 13 Statutes 599, 600.

(u) *A.-G. v. Fulham Corpn.*, [1921] 1 Ch. 440; 38 Digest 207, 429. Before the Fulham corporation had established their scheme for washing clothes, which gave rise to this action, they had provided in their washhouse, wringers, which were started and stopped, and only allowed to be worked, by corporation attendants. They had also, in addition to ordinary mangles, provided a box mangle worked by or under the direction of a corporation attendant. No objection had been taken to this.

(a) Baths and Washhouses Act, 1847, s. 5; 13 Statutes 599.

(b) Baths and Washhouses Act, 1846, s. 28; 13 Statutes 528.

(c) P.H.A., 1875, ss. 51, 52; 13 Statutes 647; *West Surrey Water Co. v. Chertsey Union*, [1894] 3 Ch. 513; 43 Digest 1060, 22.

(d) P.H.A., 1875, s. 65; 13 Statutes 653.

(e) 20 Statutes 199.

wholly (f) within the limits of their special Act, on terms to be agreed or settled by two justices, or if an inspector has been appointed (g) by the inspector.

A parish council may take water from any well, spring or stream within their area if the water can be taken without interfering with the rights of other persons, and execute any works necessary for conveying the same to baths, washhouses or open bathing places established by them (h). These powers may also be conferred by an order of the Minister of Health on the council of a borough or urban district (i).

In boroughs or districts to which sect. 121 of the Towns Improvement Clauses Act, 1847 (k), has by local Act been applied, the council may supply public baths and washhouses with water from the public wells and other sources of supply mentioned in the section.

In cases where it is not possible for a local authority to avail themselves of any of the above-mentioned special statutory provisions for the acquisition or supply of water or gas for their baths and washhouses, they are empowered to contract for the necessary supplies (l). [33]

Officers.—The Commissioners of Public Baths and Washhouses for a parish are empowered to appoint and remove at pleasure a clerk or other officers and servants for the management and superintendence of the baths and washhouses (m).

In boroughs and urban districts, the power to appoint necessary officers and servants, other than a clerk (n), is now vested in the council of the area (o). But a general power of appointing such officers as may be necessary is not conferred on a parish council by sect. 114 of the L.G.A., 1933 (oo), and a parish council will still derive their power of appointing the necessary officers and servants at baths and washhouses from sect. 12 of the Baths and Washhouses Act, 1846 (p), partially repealed as to the appointment of a clerk, by the Act of 1933.

In rural parishes the salaries of officers are subject to the approval of the parish meeting (pp).

When a swimming bath is closed as a bath during the winter months (q) the local authority may appoint and pay officers and servants for the management and superintendence of the premises when used for any purpose other than that of a bath (r).

If any officer or servant, employed by the council of a borough or urban district, is likely to be entrusted with the custody or control of

(f) *Oldham Union v. Oldham Corpn.* (1854), 23 L. T. (o.s.) 245; 43 Digest 1082, 169.

(g) Waterworks Clauses Act, 1847, ss. 3, 37; 20 Statutes 188, 199.

(h) L.G.A., 1894, s. 8 (1) (e), (i); 10 Statutes 780.

(i) L.G.A., 1933, s. 271.

(k) 13 Statutes 571.

(l) L.G.A., 1933, s. 266. As to powers of limited owners to give or contract to supply water, see Limited Owners Reservoirs and Water Supply (Further Facilities) Act, 1877, s. 6; 10 Statutes 163; Settled Land Act, 1925, s. 54; 17 Statutes 891.

(m) Baths and Washhouses Act, 1846, s. 12; 13 Statutes 522.

(n) The clerk for the purposes of the Acts in a borough is the Town Clerk (Baths and Washhouses Act, 1846, s. 2; 13 Statutes 520). The power to appoint a clerk specially for the purposes of the Acts has, except in the case of commissioners, and in London, been repealed (L.G.A., 1933, s. 307, Sched. XI., Part IV.).

(o) L.G.A., 1933, ss. 106, 107; 26 Statutes 361.

(oo) *Ibid.*, 367.

(p) 13 Statutes 522.

(pp) L.G.A., 1894, s. 7 (3); 10 Statutes 779.

(q) See "Nature of Accommodation and use of Baths," *ante*.

(r) P.H.A., 1925, s. 87 (2); 13 Statutes 1154.

money, the council must either require him to give or themselves take sufficient security for the faithful execution of his office, and for his duly accounting for all money or property which may be entrusted to him. This requirement is imposed, as from June 1, 1934, by sect. 119 (1) of the L.G.A., 1933 (*rr*), and the sub-section also allows this course to be taken in the case of any other officer employed by the council.

Officers and servants of a parish council are in a different position, because sect. 119 (1) of the Act of 1933 does not cover parish councils, and sub-sect. (3) of the section provides for security being given only as respects the treasurer of a parish council. Moreover, the words in sect. 23 of the Baths and Washhouses Act, 1846 (*s*), applying the provisions of the Companies Clauses Consolidation Act, 1845, as to the accountability of officers (*t*), are repealed by the L.G.A., 1933, except so far as relates to commissioners appointed under the Act of 1846, and except as to London. But where an officer or servant, employed by a parish council in connection with public baths or washhouses, handles money or has the custody of stores, the council would do well to require him to give security. If it be desired that he should not bear the cost of the premiums, a corresponding increase of his remuneration might be awarded by the parish council.

A bath attendant who performs duties of a kind appropriate to servants in a residential establishment is a domestic servant and is not an insured person within the meaning of the Unemployment Insurance Act, 1920 (*u*), notwithstanding the fact that he is employed in a building which is not a residential establishment (*a*).

As to bye-laws for regulating the conduct of officers and servants, and proceedings against them for offences, see "Bye-laws" and "Proceedings against Offenders," *post*. [34]

Bye-laws.—A local authority may from time to time make, alter or repeal bye-laws :

- (1) Under the Baths and Washhouses Acts, for the management, use and regulation of public baths and washhouses, open bathing places and covered swimming baths, and of the persons resorting thereto (*b*), and for the regulation, management and use of a swimming bath when it is closed as a swimming bath during the winter months and used for some other authorised purpose (*c*).

(*rr*) 26 Statutes 369.

(*s*) 13 Statutes 525.

(*t*) 2 Statutes 679.

(*u*) 20 Statutes 656.

(*a*) *Holmes v. Lord Advocate*, [1924] W. C. & Ins. Rep., 312 (attendant not an insured person when duties are to take tickets from bathers, distribute and collect towels, clean baths and bathrooms, assist in maintaining order in the baths, clean windows, limewash walls and act as labourer to joiners taking up and putting down swimming-bath floors); *Birmingham Corpn. v. Minister of Labour*, *re Lee* (1927), 26 L. G. R. 224; 44 Digest 1306, 117.

(*b*) Baths and Washhouses Act, 1846, s. 34; 13 Statutes 529; Baths and Washhouses Act, 1878, s. 3; 13 Statutes 794; P.H.A., 1925, s. 86; 13 Statutes 1154. S. 34 of the Baths and Washhouses Act, 1846, as originally enacted, contained provisions for the compulsory making of bye-laws for the purposes specified in the Schedule to that Act, including a provision for securing that men and boys over eight years old should bathe separately from women, girls and children. The compulsory provisions of s. 34 and the Schedule to the Act were repealed by s. 86 of the P.H.A., 1925, thus removing the ban on mixed bathing in public swimming baths and at open bathing places.

(*c*) P.H.A., 1925, s. 87 (2); 13 Statutes 1154.

- (2) Under the provisions of the Companies Clauses Consolidation Act, 1845, incorporated with the Baths and Washhouses Acts, for regulating the conduct of officers and servants and for providing for the due management of the affairs of the local authority in relation to baths and washhouses (*d*).

All bye-laws must be made under seal (*e*) and are subject to the approval of the Minister of Health (*f*), but they are not subject to the provisions as to bye-laws contained in the P.H.A., 1875, or in sect. 250 of the L.G.A., 1933.

Any person aggrieved by a bye-law may appeal to quarter sessions (*g*).

The bye-laws may provide for the imposition of penalties for breach thereof, not exceeding £5 for any one offence, but they must be framed so as to allow of the imposition of part only of the penalty sought to be recovered (*h*).

A printed copy or abstract of bye-laws relating to baths, open bathing places and covered swimming baths must be put up in each bath room, bathing place or swimming bath, and a copy or abstract of bye-laws relating to washhouses must be put up near every washing-tub or trough or pair of washing-tubs or troughs (*i*). Any person pulling down or defacing a board put up for the purpose of publishing the bye-laws is liable to forfeit a sum not exceeding £5, and must pay for the restoration of the board (*k*).

A copy of the bye-laws sealed by the local authority is sufficient evidence thereof in all cases of prosecution under the same (*l*).

The model bye-laws for baths and washhouses and open bathing places framed by the M. of H. deal with the following matters :

- (1) Management, use and regulation of the public baths.
- (2) Management, use and regulation of the public washhouses.
- (3) Management, use and regulation of an open bathing place.
- (4) Determining the duties of the officers and servants of the public baths and washhouses.
- (5) Determining the duties of the superintendent of the open bathing place.

When a local authority propose to make bye-laws it is desirable that a draft of the bye-laws proposed to be made should be sent to the Minister of Health for his preliminary approval. At the same time evidence should be furnished to the Minister of the adoption of the Acts unless this has been furnished to the Minister or the Local Government Board on some previous occasion, in which case a reference to the previous evidence will be sufficient. Information should also be supplied as to

(*d*) Baths and Washhouses Act, 1846, s. 23 ; 13 Statutes 525 ; Companies Clauses Consolidation Act, 1845, s. 124 ; 2 Statutes 682.

(*e*) *Ibid.*, s. 124, and see s. 1 ; 2 Statutes 648, 682. Bye-laws made by a parish meeting having the powers of a parish council are to be signed and sealed, at the meeting, by the presiding chairman and two other electors present at the meeting (L.G.A., 1933, s. 47 (2) ; 26 Statutes 328).

(*f*) Baths and Washhouses Act, 1846, s. 34 ; 13 Statutes 529 ; and see " Powers of Minister of Health," *ante*.

(*g*) *Ibid.*, s. 30.

(*h*) *Ibid.*, s. 34 ; 13 Statutes 529 ; Companies Clauses Consolidation Act, 1845, ss. 125, 126 ; 2 Statutes 683. Damage to property may also be recovered from offenders (*ibid.*, s. 154).

(*i*) Baths and Washhouses Act, 1846, s. 35 ; 13 Statutes 530.

(*k*) Companies Clauses Consolidation Act, 1845, s. 146 ; 2 Statutes 687.

(*l*) *Ibid.*, s. 127 ; 2 Statutes 683.

when and under what authority the baths and washhouses or bathing places were provided or acquired by the local authority. [35]

Proceedings against Offenders.—The provisions of the Companies Clauses Consolidation Act, 1845, with respect to the recovery of damages not specially provided for, and penalties (*m*) are incorporated with the Baths and Washhouses Acts so far as those provisions are applicable and unrepealed, with the substitution of the council or the commissioners of public baths and washhouses, for the company and directors.

The provisions of the Lands Clauses Consolidation Act, 1845, are also incorporated with the Acts, including those with respect to the recovery of forfeitures, penalties and costs (*n*).

Some of the sections or parts of sections of both of these incorporated sets of provisions are repealed by the Summary Jurisdiction Act, 1884, which substituted therefor the provisions of the Summary Jurisdiction Acts (*o*).

Proceedings for the recovery of penalties and forfeitures and damage to property are to be taken before two justices, and are not to be quashed for want of form, nor removed by *certiorari* into any of the superior courts (*p*). An offender whose name is not known may, however, be seized and detained by an officer of the local authority and dealt with by one justice (*q*).

No penalty is recoverable unless short particulars of offences and the amount of every penalty imposed by the Acts or by bye-laws affecting persons other than members of the local authority or their officers, are kept displayed at the principal office of the local authority and at or near the places to which the penalties are applicable or have reference (*r*).

In areas outside the Metropolitan police district (*s*), in cases where

(*m*) Baths and Washhouses Act, 1846, s. 23; 13 Statutes 525; Companies Clauses Consolidation Act, 1845, ss. 142—147, 150—152, 154, 156, 158—160; 2 Statutes 686—689.

(*n*) Baths and Washhouses Act, 1847, s. 4; 13 Statutes 599; Lands Clauses Consolidation Act, 1845, ss. 136, 138, 139, 145—148; 2 Statutes 1161, 1162, 1163. The Lands Clauses Consolidation Act, 1845, s. 1 (2 Statutes 1113), enacts that the provisions thereof so far as they are applicable and are not expressly varied or excepted, as well as the provisions of every other incorporated Act, shall form part of, and be construed together with, the Acts with which it is incorporated. The effect of the incorporation of provisions relating to penalties, etc., the same as or similar to those contained in the Companies Clauses Consolidation Act, 1845, incorporated in the Baths and Washhouses Act, 1846, is by no means clear. Writers of text-books dealing with the Baths and Washhouses Acts make no reference to these provisions of the Lands Clauses Consolidation Act, and presumably the opinion is that they are not incorporated. But even if the provisions of the Companies Clauses Consolidation Act, 1845, are not impliedly repealed by the Baths and Washhouses Act, 1847, s. 4, *supra*, similar provisions of the Lands Clauses Consolidation Act, 1845, not at variance with the earlier provisions referred to, would appear to be incorporated, and cumulative, and are here so treated.

(*o*) Summary Jurisdiction Act, 1884, ss. 4, 5, and Schedule; 11 Statutes 355. S. 4 (3) and the Schedule were repealed by Statute Law Revision Act, 1898 (61 & 62 Vict. c. 22).

(*p*) Lands Clauses Consolidation Act, 1845, ss. 136, 145; 2 Statutes 1161, 1163; Companies Clauses Consolidation Act, 1845, ss. 142, 147, 154, 158; 2 Statutes 686—689.

(*q*) Companies Clauses Consolidation Act, 1845, s. 156; 2 Statutes 688.

(*r*) *Ibid.*, s. 145; 2 Statutes 687.

(*s*) As to the recovery and application of penalties and forfeitures and as to appeals against convictions in the metropolitan police district (which extends beyond the administrative county of London), see Baths and Washhouses Act, 1847, s. 4; 13 Statutes 599; Lands Clauses Consolidation Act, 1845, s. 143; 2 Statutes 1163; and the section of this article entitled "London," *post*.

the application of a penalty or forfeiture is not otherwise provided for, the justices may award not more than one-half thereof to the informer (*i*). The remainder is to be paid, in a borough or urban district, to the general rate fund (*u*), and in a rural parish, to the credit of the portion of the general rate levied on the parish (*a*).

An appeal against a determination of a justice or justices lies to the general quarter sessions (*b*).

The servants and agents of the council or commissioners may remove any person offending against the bye-laws; and baths, washhouses, open bathing places and covered swimming baths are to be deemed to be public and open places so as to make offences against decency therein criminal offences (*c*). Persons who have been convicted of disobeying the bye-laws or of an offence against public decency may be refused admittance by the officers and servants of the council and commissioners (*d*). [36]

Charges.—A local authority may make charges for or in connection with the use of any bath, washhouse or bathing place, according to a scale fixed by them, which may provide for different sets of charges for different classes of baths, washing-tubs or washing-troughs. The scale is to be fixed by a resolution passed by the local authority. At least one month before the resolution fixing the scale is considered by the local authority, the scale must be published in at least one newspaper circulating in the area of the authority and in such other manner as they may consider necessary (*e*). Unless and until the scale of charges is made in accordance with the above-mentioned provisions of the P.H.A., 1925 (*e*), the charges to be made for the use of baths and washhouses are governed by any existing bye-laws determining charges and by the provisions in the Baths and Washhouses Acts limiting the maximum charges which may be made by the local authority (*f*).

For the recovery of charges for the use of washhouses, clothes brought to be washed, or other goods or chattels of a person refusing to pay the charges, may be detained by the officers having the management of the washhouse until payment is made. If payment is not made within seven days the articles or any of them may be sold and the proceeds applied in defraying the unpaid charges and the expenses of the detention and sale; any surplus and any unsold articles are to be returned to the owner on demand (*g*).

A charge may be made for the admission to a bathing place of non-

(*i*) Lands Clauses Consolidation Act, 1845, s. 139; 2 Statutes 1162; Companies Clauses Consolidation Act, 1845, s. 152; 2 Statutes 688; both sections as amended by the Statute Law Revision Act, 1875 (38 & 39 Viet. c. 66).

(*u*) Baths and Washhouses Act, 1846, s. 40; 13 Statutes 531; and L.G.A., 1933, ss. 185 (1), 187 (1), 188 (1); 26 Statutes 407, 408.

(*a*) Baths and Washhouses Act, 1846, s. 40; R. & V.A., 1925, s. 2; 14 Statutes 618; Overseers Order, 1927, Art. 13 (S.R. & O., 1927, No. 55); 14 Statutes 774.

(*b*) Lands Clauses Consolidation Act, 1845, ss. 146, 147; 2 Statutes 1163; Companies Clauses Consolidation Act, 1845, ss. 159, 160; 2 Statutes 689. See also title APPEALS TO THE COURTS.

(*c*) Baths and Washhouses Act, 1878, s. 10; 13 Statutes 794.

(*d*) *Ibid.*, s. 11; 13 Statutes 795.

(*e*) P.H.A., 1925, s. 85; 13 Statutes 1153. "Month" means calendar month (Interpretation Act, 1889, s. 3; 13 Statutes 993).

(*f*) Baths and Washhouses Act, 1846, s. 34; 13 Statutes 529; Baths and Washhouses Act, 1847, s. 7 and Schedule; 13 Statutes 599; Baths and Washhouses Act, 1878, ss. 3, 4, 14 and Schedule; 13 Statutes 794, 795; P.H.A., 1925, s. 9 and Sched. V.; 13 Statutes 1118, 1156.

(*g*) Baths and Washhouses Act, 1846, s. 38; 13 Statutes 530.

bathers, but no entertainment duty is payable in respect of such charge if nothing similar to an entertainment is provided by the authority (*h*). [37]

Income and Expenditure.—The income and expenditure of the council of a borough or urban district in relation to their baths and washhouses undertaking is to be paid into and from the general rate fund (*i*). In the case of a parish council, the expenditure will be defrayed, as part of the expenses of the parish council, from money obtained by a precept of the council addressed to the R.D.C. and obtained by the levy in the parish of an additional item of the general rate under sect. 2 (5) of the R. & V.A., 1925 (*k*). Any profit on the baths and washhouses undertaking would be applied in reduction of the sum required by precept to meet the expenses, under other heads, of the parish council. But expenses under the adoptive Acts are excluded from the limit of 4*d.* in the £ imposed by sect. 193 (3) of the L.G.A., 1933, on the expenses of the parish council (*l*), and no limit is imposed on their expenditure by the Baths and Washhouses Acts, 1846 to 1925 (*m*), although sect. 16 of the Act of 1846 contemplated that the vestry would sanction from time to time the expenditure to be charged on the rate (*n*). Apparently this provision would be satisfied by the parish meeting giving a sanction to expenditure not exceeding a named sum in any financial year being charged on the rate, the sanction to remain in force until it is varied by the parish meeting. [38]

Accounts and Audit.—In boroughs the council must keep distinct accounts of their receipts, payments, credits and liabilities, to be called "The Public Baths and Washhouses Account" (*o*). There seems to be no corresponding provision directing urban district councils or parish councils to keep separate accounts.

In a borough, the accounts will be subject to audit by the auditors who audit the general accounts of the borough council (*p*). The accounts of an urban district council or parish council will, however, be subject to audit by a district auditor under sect. 219 of the L.G.A., 1933 (*pp*), who will also under the same section audit the accounts of a metropolitan borough council relating to baths and washhouses. For further information, see titles **AUDIT** and **AUDITORS**. [39]

Sale of Baths and Washhouses.—If any public baths or washhouses or bathing places are found after they have been established for seven years to be unnecessary or too expensive to be kept up, they may be sold with the approval of the Minister of Health (*q*). [40]

Borrowing Powers.—The Baths and Washhouses Acts gave a general power of borrowing, for carrying the Acts into operation, to councils

(*h*) *A.-G. v. Southport Corpn.*, [1934] 1 K. B. 226; Digest Supp. See title **ENTERTAINMENTS, PROVISION OF**.

(*i*) L.G.A., 1933, ss. 185, 188, 194; 26 Statutes 407, 408, 412.

(*k*) 14 Statutes 620.

(*l*) See the definition of "the adoptive Acts" in s. 305 of L.G.A., 1933.

(*m*) But in a parish not having a parish council the total expenses of the parish meeting, including expenses under the Baths and Washhouses Acts, are not to exceed a rate of eightpence, or such higher rate as the Minister of Health may allow (L.G.A., 1933, s. 193 (5)).

(*n*) In rural parishes, the parish meeting is substituted for the vestry by L.G.A. 1894, s. 7 (3); 10 Statutes 779.

(*o*) Baths and Washhouses Act, 1846, s. 4; 13 Statutes 521.

(*p*) See L.G.A., 1933, ss. 237—240; 26 Statutes 433—436.

(*pp*) 26 Statutes 424.

(*q*) Baths and Washhouses Act, 1846, s. 32; 13 Statutes 529.

of boroughs, subject to the approval of the Minister of Health, and a power to commissioners of public baths and washhouses, limited to borrowing money by way of a mortgage of rates, subject to the sanction of the parish meeting and the approval of the Minister of Health, and subject further to compliance with the provisions of the Companies Clauses Consolidation Act, 1845, sects. 38—55 (*r*).

But as explained on p. 16, *ante*, the councils of boroughs and urban districts were authorised by sect. 233 of the P.H.A., 1875 (*s*), to borrow with the sanction of the Local Government Board, not only for expenses incurred in the execution of the Act of 1875, but also in the execution of the Sanitary Acts, and as these were defined in sect. 4 of the Act to include the Baths and Washhouses Acts, 1846 and 1847, loans for baths and washhouses were thus brought within the borrowing power given by sect. 233 of the Act of 1875. In practice, all such loans raised by borough or urban district councils have been sanctioned under the P.H.A., 1875, and the borrowing power given by sect. 21 of the Baths and Washhouses Act, 1846, has not been used.

Similarly a parish council was empowered by sect. 12 of the L.G.A., 1894 (*t*), to borrow, with the consent of the county council and the Local Government Board, for any purpose for which they were authorised to borrow under any of the adoptive Acts. Parish councils have hitherto borrowed for baths and washhouses under this provision.

Sect. 12 of the L.G.A., 1894, is repealed by the L.G.A., 1933, but although sect. 233 of the P.H.A., 1875, is in part repealed, the borrowing power in that section is preserved by the Act of 1933. As from June 1, 1934, when that Act comes into operation, the council of a borough or urban district will be authorised by the general provision in sect. 195 (*e*) of the L.G.A., 1933, to borrow, with the consent of the Minister of Health, any money which they would be authorised by sect. 233 of the P.H.A., 1875, or sect. 21 of the Baths and Washhouses Act, 1846, to borrow. But in practice it would not be necessary to resort to para. (*e*) of sect. 195, because almost invariably any loan desired would be for the acquisition of land, the erection of a building, or the execution of any permanent work, the provision of plant, or the doing of any other thing which the council have power to execute, provide or do, the cost of which the Minister would allow to be spread over a term of years. These purposes are covered by paras. (*a*) to (*c*) of sect. 195 of the Act of 1933 (*u*).

A parish council would also borrow for baths and washhouses under sect. 195 of the L.G.A., 1933, but the consent of the county council and of the Minister is required by the section. Para. (*d*) of the sect. allows the county council to borrow for the purpose of lending to a parish council any money which that council are authorised to borrow, and the proviso to sect. 195 dispenses with the consent of the Minister to any such borrowing by the county council.

One of the objects of Part X. of the L.G.A., 1933, was to apply a single code to loans raised by local authorities, and any loan borrowed under sect. 195 of the Act will become subject to the provisions of Part X. of the Act. See, further, the title BORROWING.

The Public Works Loan Commissioners may make loans to local

(*r*) Baths and Washhouses Act, 1846, ss. 21, 23; 13 Statutes 525; Baths and Washhouses Act, 1878, s. 9; 13 Statutes 794.

(*s*) 13 Statutes 722.

(*t*) 10 Statutes 784.

(*u*) 26 Statutes 412.

authorities, including commissioners for public baths and wash-houses (*x*). [41]

London.—The Baths and Washhouses Acts, 1846–1925, extend to London (*a*). The Acts have been adopted and baths have been established in all the boroughs, the Finsbury baths being opened early in 1931. The City of London Corp'n. has not established any baths or washhouses.

Swimming instruction is given at certain of the swimming baths. In some cases the borough council engages the instructors and charges fees, in others it permits the instructors to be present and receive their own fees. In the latter case the scale of fees is often fixed by the borough council. At four establishments, viz., Bermondsey (Grange Road and Lower Road), and Shoreditch (Haggerston and Hoxton), instruction is free to women and girls. In addition to the swimming baths provided by the local authorities under the Baths and Washhouses Acts, the L.C.C. maintains three swimming baths for elementary school children, but in the main London elementary school children attend the ordinary public baths for swimming instruction, and the Council pays from 1*d.* to 2*d.* for each attendance of a scholar.

There are 73 establishments in all, 65 with private baths, 50 with swimming baths, and 49 with washhouses.

Several institutes, such as the Regent Street Polytechnic, which possess swimming baths primarily for the use of their members permit the general public to use them.

In the winter, in most boroughs, the larger swimming baths are used as gymnasiums, and are also let for concerts, dances, meetings, and social functions generally.

The Lands Clauses Consolidation Act, 1845, exclusive of the provisions as to compulsory purchase, are incorporated with the Baths and Washhouses Act, 1847, by sect. 4 of that Act, but sect. 60 of the L.C.C. (General Powers) Act, 1929 (*b*), enables a borough council to purchase land compulsorily for the purposes of the Baths and Washhouses Acts, 1846–1925, by means of an order of the council confirmed by the M. of H. in accordance with the Third Schedule to that Act. Sect. 148 of the Lands Clauses Consolidation Act, 1845 (*c*), provides that every penalty or forfeiture imposed by this or the special Act or any Act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall

(*x*) Public Works Loans Act, 1875, s. 9 and Sched. I.; 12 Statutes 258, 273; Baths and Washhouses Act, 1846, s. 22; 13 Statutes 525 (as amended by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66)); Baths and Washhouses Act, 1878, s. 9; 13 Statutes 794; P.H.A., 1875, s. 243; 13 Statutes 726. The Public Works Loans Act, 1842, which is referred to in s. 22 of the Baths and Washhouses Act, 1846, was repealed by the Public Works Loans Act, 1875, s. 57; 12 Statutes 273; but by s. 55 of the same Act, 12 Statutes 272, it is provided that a reference in any Act to an enactment thereby repealed or to the commissioners for the execution of any Act thereby repealed shall be deemed to refer to the corresponding enactments in the Public Works Loans Act, 1875, and to the Public Works Loan Commissioners under that Act. See title PUBLIC WORKS LOANS ACTS. S. 36 of the Act of 1846, and s. 5 of the Act of 1847, prescribing the proportion of accommodation for the labouring classes by s. 62 of the L.C.C. (General Powers) Act, 1930; 23 Statutes 367; no longer have effect with regard to metropolitan boroughs.

(*a*) As to their adoption in London and abolitions of commissioners, see Vol. I., p. 115.

(*b*) 11 Statutes 1425.

(*c*) 2 Statutes 1163.

be paid to the receiver of the metropolitan police district and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid and applied by the Metropolitan Police Courts Act, 1839. [42]

BEACHES

See ESPLANADES, PROMENADES AND BEACHES.

BEATING THE BOUNDS

	PAGE		PAGE
THE CUSTOM OF PERAMBULATION		EXPENSES OF PERAMBULATIONS -	30
OR BEATING THE BOUNDS -	29	EFFECT OF EVIDENCE OF PER-	
PASSAGE OF PERAMBULATIONS OVER		AMBULATIONS -	30
PRIVATE PROPERTY -	29	LONDON -	31

The Custom of Perambulation or Beating the Bounds.—The custom of perambulating the boundaries of parishes, often called “beating the bounds,” is extremely ancient; so ancient, indeed, that its origin is unknown. It was formerly conducted every year upon some day in Rogation week, often upon Ascension Day itself; and before the Reformation it partook largely of the nature of a religious procession. It is still practised in Rogation week in some places, where the boys of the parish are conducted round the boundary, and strike the boundary stones with willow wands. The object of taking boys is, of course, that witnesses to the perambulation may survive as long as possible. Minute accounts of perambulations in the nineteenth century are to be found in the reports of certain cases (*a*).

The custom does not justify assaults, such as bouncing unwilling persons on boundary stones or whipping children, to perpetuate testimony.

It would seem that a perambulation cannot lawfully be made except in Rogation week; and the expenses are not payable out of the rates if it is made more than once in three years, *vide infra*. [43]

Passage of Perambulations over Private Property.—Parishioners in the course of a perambulation may go over any man’s land so far as is necessary for their purpose, and may abate all nuisances in their way; for instance, they may break down gates or other barriers which obstruct them in going along the boundary. This right is based not upon prescription, but upon a common usage or custom within the parish; in other words, it is not a personal right vested in any one or more parishioners, but a local custom. This distinction is largely a question of pleading; but persons making a perambulation must be

(*a*) *Taylor v. Devey* (1837), 7 Ad. & El. 409; 7 Digest 321, 418; *Ipswich Dock Commissioners v. St. Peter, Ipswich Overseers* (1866), 7 B. & S. 310; 33 Digest 29, 141.

prepared to prove that, in doing so, they are going along a line which it has been the immemorial custom in the parish to follow on such occasions. These principles are laid down in *Goodday (or Goodway) v. Michell (b)*; and were followed in *Taylor v. Devey (c)*. But in the latter case it was held that an alleged custom for the perambulators to go through a particular house which was not upon the boundary line nor in any manner wanted in the course of the perambulation was bad in law. The persons performing the perambulation must therefore be careful to keep to a line, which is not only the customary line, but is also a line necessary in order that they may follow as closely as is physically possible the boundary of the parish.

Both these cases were actions of trespass against the persons who performed the perambulation, and it was held in *Taylor v. Devey* that entries in the parish books to show that perambulations had taken a particular line were not evidence upon the issue that had there to be tried. Evidence of a custom to perambulate the boundaries of a parish is not sufficient to support an alleged right to perambulate the boundaries of a liberty, though the liberty is for some purposes a part of the parish (*d*). [44]

Expenses of Perambulations.—In two early cases it was held that the persons performing a perambulation could not sue the occupiers of particular farms for refreshments, although it might have been usual for these to be provided at the farms (*e*).

All expenses properly incurred by the officers of the parish on the perambulation of the parish, and in setting up and keeping in proper repair the boundary stones of the parish, are to be paid and allowed to the officers out of the poor rates of the parish, “provided that such perambulations do not arise more than once in every three years” (*f*). The powers and duties which the overseers had in the matter have been transferred to the rating authority, and their expenses are chargeable to the account of the parish in respect of which they were incurred (*g*).

It is submitted that a reasonable charge for refreshments to persons actually and necessarily engaged in the perambulation of a large parish would be included among the “proper expenses” of a perambulation; but not in any case payments for banners, music or ringers or for a dinner given after the close of the perambulation. [45]

Effect of Evidence of Perambulations.—Where the boundaries of a parish are in issue, accounts of perambulations are admissible as evidence of reputation: *per* BLACKBURN, J., in *Ipswich Dock Commissioners v. St. Peter, Ipswich Overseers (h)*. In that case, however, the production of these accounts was not objected to. But more weight was attached to the evidence of payment of parochial rates in a place outside the perambulated boundaries, as being “acts which raise a question of money value,” than to the evidence of reputation from perambulations (*i*); and that place was held to be within the parish. *The Ipswich*

(b) (1595), Cro. Eliz. 441; 7 Digest 321, 413.

(c) See note (a).

(d) *Grant v. Kearney* (1823), 12 Price, 773; 7 Digest 321, 414.

(e) *Reynolds' Case*, also called *Churchwardens of Uffington* (1615), 1 Roll. Rep. 259; 19 Digest 575, 3768.

(f) Poor Law Amendment Act, 1844, s. 60; 14 Statutes 510.

(g) Overseers' Order (S.R. & O., 1927, No. 55), Arts. 5 (3), 13, 16 (2); 14 Statutes 772—775.

(h) (1866), 7 B. & S. 310, at p. 333; 33 Digest 29, 141.

(i) *Ibid.*, at p. 346.

Case purported to follow *McCannon v. Sinclair* (*k*); but in *McCannon's Case*, there was admittedly no evidence of any acts or authority exercised by the parish outside the perambulated boundary, and it is not easy to understand the *ratio decidendi*. In both these cases the parish abutted on a tidal navigable river, and the question was whether the parish extended to the middle of the river; the perambulations had kept (as closely as it was possible to go on foot) to the bank of the river; but, nevertheless, the question in each case was answered in the affirmative. *McCannon's Case*, and especially the *Ipswich Case*, are still useful as showing that evidence of perambulations, while admissible, is by no means conclusive.

It should be noted that if it had been decided that the parish boundary coincided with low-water mark, and that the stream was in another parish, the boundary would not have been altered by sect. 27 of the Poor Law Amendment Act, 1868 (*l*), under which the banks of every river to the middle of the stream, were annexed to the parishes which they respectively adjoined, because that section only applied to an area not included on December 25, 1868, within the boundaries of a parish.

It may be noted that in the *Ipswich Case*, the evidence admitted consisted of documents (including unsigned entries in disbursement books) which were produced from proper custody, namely, the parish chest. Documents in possession of an incumbent who had received them from the representatives of his predecessor as papers belonging to the parish were held to be produced from proper custody (*m*).

For further information upon the whole subject, the reader may consult Burn's Ecclesiastical Law, Vol. 3, pp. 75, 111; Viner's Abridgement, sub. tit. "Perambulation."

See also as to the ascertainment, defining, adjusting, and fixing of parish boundaries, Vol. I., pp. 405, 406, and the title PARISH. [46]

London.—An illustration of the effect of evidence of perambulation in London is to be found in the case of *Burrell v. Nicholson* (*n*), in which the boundaries of a parish were proved by the evidence of a number of old men who, when charity boys, had gone the perambulation of the bounds, and had been whipped at the marks as an aid to memory. [47]

(*k*) (1859), 2 E. & E. 53; 38 Digest 479, 379.

(*l*) 10 Statutes 558, 559; repealed, except as to London, by the L.G.A., 1933. The corresponding provision in s. 144 of that Act deals only with accretions and the seashore, not with the banks of rivers, because s. 27 of the Act of 1868 would have settled the boundary in these cases.

(*m*) *Earl v. Lewis* (1801), 4 Esp. 1, N. P.; 7 Digest 318, 380.

(*n*) (1833), 1 My. & K. 680; 7 Digest 323, 432.

BEGGING

	PAGE		PAGE
SCOPE OF ARTICLE - - -	32	Care and Protection of Children	
P.H.A., 1875 - - -	32	found Begging - - -	33
Beggars Resorting to Common		Local Authorities - - -	34
Lodging-houses - - -	32	VAGRANCY ACT, 1824 - - -	34
CHILDREN AND YOUNG PERSONS		Children Procured or Encouraged	
ACT, 1933 - - -	32	to Beg - - -	34
Use of Persons under 16 for		LONDON - - -	34
Begging - - -	32		

*See also titles : INFANTS, CHILDREN AND YOUNG PERSONS ;
LODGING-HOUSES.*

SCOPE OF ARTICLE

Local administration is concerned with begging in two ways: (1) Reports under the P.H.A., 1875, of beggars resorting to common lodging-houses; (2) Use of persons under 16 for begging and the care and protection of them when found begging (Children and Young Persons Act, 1933). Begging and procuring or encouraging children to beg are offences, dealt with by the police, under the Vagrancy Act, 1824. [48]

P.H.A., 1875

Beggars Resorting to Common Lodging-houses.—The keeper of a common lodging-house in which beggars or vagrants are received to lodge must, from time to time, if required in writing by the local authority, report to them, or to such person as they may direct, every person who resorted to such house during the preceding day or night, and for that purpose schedules shall be furnished by the local authority to the person so ordered to report, which schedules he must fill up with the information required and transmit to the local authority (*a*). A keeper who fails to make a report, after being furnished with such schedules, of the persons resorting to his lodging-house is liable to a penalty not exceeding £5, and in the case of a continuing offence to a further penalty not exceeding 40*s.* for every day during which the offence continues (*b*). [49]

CHILDREN AND YOUNG PERSONS ACT, 1933

Use of Persons under 16 for Begging.—Any person who causes or procures any child (*i.e.* a person under the age of 14 years (*c*)) or young person under the age of 16 years or, having the custody, charge or

(*a*) P.H.A., 1875, s. 83; 13 Statutes 659. For a form of notice to report, see 12 Ency. Forms, title "Public Health," p. 149.

(*b*) S. 86; 13 Statutes 659.

(*c*) Children and Young Persons Act, 1933, s. 107 (1); 26 Statutes 239.

care of such a child or young person, allows him to be in any street, premises, or place for the purpose of begging or receiving alms, or of inducing the giving of alms (whether or not there is any pretence of singing, playing, performing, offering anything for sale or otherwise), is liable on summary conviction to a fine not exceeding £25, or alternatively, or in default of payment of such a fine, or in addition thereto, to imprisonment not exceeding three months. If it is proved that the child or young person was in any such street, etc., for any such purpose and the person having the custody, etc., of him allowed him to be in the street, etc., that person shall be presumed to have allowed him to be in the street, etc., for that purpose. If any person while singing, playing, performing or offering anything for sale in a street or public place has with him a child who has been lent or hired out to him, the child is to be deemed to be there for the purpose of inducing the giving of alms (*d*). "Street" includes any highway and any public bridge, road, lane, footway, square, court, alley or passage whether a thoroughfare or not, and "public place" includes any public park, garden, sea beach or railway station and any ground to which the public for the time being have or are permitted to have access whether on payment or otherwise (*e*). A local authority or a poor law authority may institute proceedings for any offence under the above provisions (*f*).
[50]

Care and Protection of Children found Begging.—Any local authority, constable or authorised person having reasonable grounds for believing that a child or young person under the age of 17 (*g*) is in need of care or protection may bring him before a juvenile court, and it is their duty to bring before a juvenile court any child or young person under 17 residing or found in their district who appears to them to be in such need, unless they are satisfied that the taking of proceedings is undesirable in his interests, or that proceedings are about to be taken by some other person (*h*).

A child or young person is in need of care or protection who, having no parent or guardian, or a parent or guardian unfit to exercise care and guardianship, or not exercising proper care and guardianship, is either falling into bad associations, or exposed to moral danger, or beyond control (*i*). The fact that a child or young person is found begging or receiving alms (whether or not there is any pretence of singing, playing or offering anything for sale), or is found loitering for the purpose is to be evidence that he is exposed to moral danger (*k*).

If the court is satisfied that any person brought before them by a local authority is a child or young person in need of care or protection, they may either order him to be sent to an approved school, or commit him to the care of any fit person (including the local authority) (*l*), whether a relative or not, who is willing to undertake the care of him; or order his parent or guardian to enter into a recognisance to exercise proper care and guardianship; or without making any other order or in addition to committing him to the care of a fit person or ordering his

(*d*) S. 4; 26 Statutes 174.

(*e*) S. 107 (1); *ibid.*, 239.

(*f*) S. 98; *ibid.*, 234.

(*g*) S. 107 (1); *ibid.*, 239.

(*h*) S. 62 (2); *ibid.*, 208.

(*i*) S. 61 (1) (a); *ibid.*, 207.

(*k*) S. 61 (2); *ibid.*, 208.

(*l*) S. 76 (1); *ibid.*, 216.

parent or guardian to enter into a recognisance, may put him under probation (m). [51]

Local Authorities.—As respects children the local education authority for elementary education are the local authority, and as respects other persons the councils of counties and county boroughs. A county council may arrange with the councils of boroughs or urban districts, which are local education authorities for elementary education, for the exercise and performance within their area of such of the powers and duties of the county council under the Act and on such terms as to payment and otherwise as may be agreed (n). [52]

VAGRANCY ACT, 1824

Children Procured or Encouraged to Beg.—Every person wandering abroad, or placing himself or herself in any public place, street, highway, court or passage, to beg or gather alms, or causing or procuring or encouraging any child or children so to do is to be deemed an idle or disorderly person (o). An offender is punishable on commitment by one justice with hard labour for not exceeding 14 days, or by two justices in a petty sessional court for not exceeding one calendar month (p). A fine not exceeding £5 may be imposed instead of imprisonment (q). On second conviction the offender is to be deemed a rogue and vagabond for which the maximum punishment of a calendar month is increased to three calendar months and the maximum fine to £25 (r). A person who has been adjudged to be and duly convicted as a rogue or vagabond is, on a further conviction, to be committed with or without hard labour (s) to the next general or quarter sessions, and sessions can order further imprisonment with hard labour for not exceeding one year, and that a male offender be whipped (t). [53]

LONDON

Sect. 83 of the P.H.A., 1875, as to beggars resorting to common lodging-houses, is a reproduction of sect. 8 of the Common Lodging Houses Act, 1853 (u), which is still in force in the Metropolis. The last-mentioned Act was repealed except as to the metropolitan police district by the P.H.A., 1875, and except as to the administrative county of London by the Statute Law Revision Act, 1892.

The law under the Vagrancy Act, 1824, and the Children and Young Persons Act, 1933, applies equally to London. [54]

(m) S. 62 (1); 26 Statutes 208.

(n) S. 96 (1), (2); *Ibid.*, 232.

(o) Vagrancy Act, 1824, s. 3; 12 Statutes 913.

(p) *Ibid.*, s. 3; 12 Statutes 913; Summary Jurisdiction Act, 1879, s. 20; 11 Statutes 331.

(q) *Ibid.*, s. 4; 11 Statutes 323.

(r) Vagrancy Act, 1824, s. 4; 12 Statutes 913; Summary Jurisdiction Act, 1879, ss. 4, 20 (7); 11 Statutes 323, 331.

(s) Summary Jurisdiction Act, 1879, s. 4; 11 Statutes 323.

(t) Vagrancy Act, 1824, s. 10; 12 Statutes 919.

(u) 11 Statutes 886.

BETTERMENT

	PAGE		PAGE
INTRODUCTION - - - -	35	UNEMPLOYMENT (RELIEF WORKS)	
Betterment or Improvement		Act, 1920 - - - -	44
Charge - - - -	37	Set-off - - - -	45
Set-off - - - -	37	Recoupment - - - -	45
Recoupment - - - -	37	ROADS IMPROVEMENT ACT, 1925	
EARLY BETTERMENT PROVISIONS -	37	Set-off - - - -	46
REPORT OF THE SELECT COMMITTEE OF 1894 - - - -	38	P.H.A., 1925 - - - -	47
MINISTRY OF RECONSTRUCTION		Set-off - - - -	47
Report, 1918 - - - -	40	Recoupment - - - -	47
Betterment - - - -	40	HOUSING ACT, 1930	
Injurious Affection - - - -	41	Set-off - - - -	48
Recoupment - - - -	41	PUBLIC WORKS FACILITIES ACT, 1930 - - - -	48
LATER BETTERMENT PROVISIONS -	42	TOWN AND COUNTRY PLANNING ACT, 1932 - - - -	49
LIGHT RAILWAYS ACT, 1896	43	Claim for Betterment - - - -	50
Set-off - - - -	43	Deferment and Withdrawal of Claim - - - -	50
DEVELOPMENT AND ROAD IMPROVEMENT FUNDS ACT, 1909	43	Renewal of Claim - - - -	50
Set-off - - - -	43	Assessment of Claims - - - -	52
Recoupment - - - -	44	Application of Betterment Moneys - - - -	53

See also titles :

COMPENSATION FOR TOWN PLANNING ;
COMPENSATION ON ACQUISITION OF
LAND ;
COMPULSORY PURCHASE OF LAND ;
GARDEN CITIES ;
LONDON TOWN PLANNING ;
OUTGROWTHS ;

REGIONAL PLANNING ;
TOWN AND COUNTRY PLANNING ;
TOWN PLANNING AGREEMENTS WITH
OWNERS ;
TOWN PLANNING AUTHORITIES ;
TOWN PLANNING SCHEMES.

Introduction.—The word “betterment,” in its ordinary sense denoting improvement, has acquired a special and technical meaning in relation to land, the value of which is increased as a consequence of the carrying into effect on other land of a scheme sanctioned by Parliament. [55]

The principle of betterment has been defined as being “that persons benefited by public expenditure should contribute to such expenditure to the extent of the increased value of their property, and this not only if the improvement effected by the public authority was carried out for the purpose of conferring a benefit on such property, but also if the resulting benefit was purely accidental, the expenditure having been undertaken for a totally different purpose” (a).

This definition is not entirely satisfactory. In practice the contribution does not, in many cases, represent the full extent of the increased value; in some cases the total contributions are limited to the cost of the works of improvement, and the principle has been applied not only to works executed by a public authority, but to works of statutory undertakers other than public authorities.

(a) Palgrave, Dictionary of Political Economy, s.v. “Betterment.”

The Royal Commission on the Housing of the Working Classes in their first report presented in 1885 defined betterment, for the purposes of that report, as "the principle that rates should be levied in a higher measure upon the property which derives a distinct and direct advantage from an improvement instead of upon the community generally, who have only the advantage of the general amelioration of the health of the district."

This definition also is open to objection for the reason that a betterment charge need not be a payment in the nature of a rate.

No provision is made in the Lands Clauses Consolidation Act, 1845, for the application of the principle of set-off, and an attempt in 1863 to secure a recognition by the courts of that principle, on an assessment of compensation for injurious affection, was unsuccessful (b).

Nor can the compensation for the land taken be reduced by setting off the increase in value of adjacent land of the same owner consequent on the execution of the undertaking for which the purchase is made (c).

Local Acts, incorporating the Lands Clauses Consolidation Act, 1845, do not necessarily enable land beyond the limits of the land actually required for a public improvement to be acquired with the object of obtaining recoupment, even though the additional land is shown in the deposited plans and described in the book of reference (d). Whether such a restriction applies in particular cases depends on the wording of the local Act in question (e). [56]

In 1894 a Select Committee of the House of Lords, appointed to consider and report upon the subject of betterment in relation to improvements sanctioned by Parliament and effected by the expenditure of public funds, defined the principle of betterment as being: "That persons whose property has clearly been increased in market value by an improvement effected by local authorities should specially contribute to the cost of the improvement," though Lord Halsbury, the Chairman of the Select Committee, on the consideration of the Report by the House on July 19, 1894, said that he did not consider that this definition was intended to be exhaustive. [57]

It is apparent, from the definitions above cited, that there is no general consensus of opinion as to the exact meaning of the term "betterment." Moreover, the term has been used in recent years in a wider sense to include provision for the recoupment of the cost of an improvement by a purchase of adjoining land, or for setting off an enhancement in the value of land remaining in the hands of an owner, where part only of his land has been taken, in reduction of the price of the land taken for the improvement. [58]

(b) *Senior v. Metropolitan Rail. Co.* (1863), 32 L. J. Ex. 225; 11 Digest 147, 375. "If an individual has a portion of his land taken, he is entitled to be paid for it. This is the first time such a question of set-off was ever mooted" (per WILDE, B., at p. 230). See also *Eagle v. Charing Cross Rail. Co.* (1867), L. R. 2 C. P. 638; 11 Digest 144, 286; *South Eastern Rail. Co. v. L.C.C.*, [1915] 2 Ch. 252; 11 Digest 124, 156.

(c) *Galloway v. London Corpn.* (1866), L. R. 1 H. L. 34; 11 Digest 117, 109; *Quinton v. Bristol Corpn.* (1874), L. R. 17 Eq. 524; 11 Digest 117, 110.

(d) *Donaldson v. South Shields Corpn.* (1899), 68 L. J. Ch. 162; 11 Digest 119, 125. The local authority must purchase land not required for their undertaking if it comes within the provisions of s. 92 of the Lands Clauses Consolidation Act, 1845; 2 Statutes 1145; and if the application of that section has not been excepted by the local Act.

(e) *South Eastern Rail. Co. v. L.C.C.*, [1915] 2 Ch. 252; 11 Digest 124, 156.

For the purposes of this article, betterment will be taken to include provisions contained in an Act of Parliament or enacted by subordinate legislation for any of the following purposes :

Betterment or Improvement Charge.—The levy by a local authority of a contribution specially estimated and assessed from owners of property which is increased in value as a direct result of improvements made by that authority, whether the contribution is to be applied specifically to a reduction of the cost of the improvement in respect of which it is levied, or not. [59]

Set-off.—In cases where part only of an owner's land is taken by a local authority, company or person for the purpose of works which enhance the value of the remaining land, or where land is in some respects injuriously affected and in other respects improved in value as a result of the execution of the works—the set-off of the estimated value of the benefits so accruing to the owner in assessing the compensation payable to him for the land taken or for injurious affection. [60]

Recoupment.—The purchase by a local authority of land, adjoining land taken for the purpose of an improvement, with the object of securing to the authority the benefit of the increase in value of that adjoining land, brought about by the execution of the scheme of improvement. [61]

It is sometimes assumed that provisions such as those in sect. 213 of the P.H.A., 1875 (*f*), with regard to the levy of private improvement rates for private improvement expenses are an example of the principle of betterment, but a charge of this nature, levied at a uniform rate on the rateable value of the hereditaments in respect of which the expenses of the works were incurred, is merely a special mode of enabling the local authority to recover the cost of the works from the owners of the premises on which the works were executed and cannot be held to be betterment. It is rather the levy of a rate for special purposes (*g*). [62]

Early Betterment Provisions.—The principle of betterment is not a modern innovation. It was adopted by Parliament when legislating for the rebuilding of London after the great fire of 1666, though the word used in that Act is not "betterment" but "melioration" (*h*).

It is to be found in statutes relating to the Metropolis in the first half of the nineteenth century (*i*), and in the Defence Act, 1860, the principle of set-off is recognised (*k*).

Apart from the provisions made in the P.H.A., 1875, for the recovery of private improvement expenses by means of a private improvement rate, which for reasons already given cannot be considered to embody the principle of betterment, the first modern public Act of Parliament

(*f*) 13 Statutes 715.

(*g*) The Statute of Sewers (1531); 17 Statutes 985; repealed by the Land Drainage Act, 1930; 23 Statutes 529; has been cited as containing an example of the principle of betterment, but that Act merely made provision for the apportionment and collection of the cost of works from the owners of land for whose benefit the works were executed.

(*h*) An Act for rebuilding the City of London, 1666 (18 & 19 Car. 2, c. 8), s. 26. The marginal note to the section refers, however, to "houses which be bettered in value." For a reference to a claim for melioration under this Act, see Pepys's Diary, December 3, 1667.

(*i*) See, e.g., 4 & 5 Wm. 4, c. 96, s. 26.

(*k*) S. 18; 3 Statutes 491.

which applied the principle in relation to undertakings of local authorities was the Artizans and Labourers Dwellings Act (1868) Amendment Act, 1879, sect. 7 of which allowed a set-off ^(l) by providing that an arbitrator in assessing the amount of the purchase money to be paid to an owner of property should have regard to and make allowance for any increased value accruing in his opinion to other property of the same owner from the alteration or demolition of the purchased premises. The principle was extended by the Artizans Dwellings Act, 1882, s. 8 ^(s) ^(m), to cases in which the demolition of an obstructive building increased the value of other buildings. These provisions were repealed, and after reappearing in various Housing Acts were re-enacted in sect. 20 ⁽⁶⁾ and Parts I., II. and III. of the First Schedule to the Housing Act, 1925 ⁽ⁿ⁾. These provisions have in turn been repealed by the Housing Act, 1930 ^(o), referred to later in this article. It has been questioned whether the provisions of the repealed Housing Acts afford a true example of the principle of betterment.

The expediency of including betterment provisions in an Improvement Bill was considered by the L.C.C. soon after the council had been established, and clauses for securing betterment were included in the London Streets (Strand Improvement) Bill of 1890.

The Bill was considered by a Committee of the House of Commons and was rejected by them, mainly on the grounds that it was difficult to equalise a betterment charge and that, in case of new streets, it is doubtful whether any other than corner and frontage owners derive any benefit. The committee considered that the principle of recoupment by purchase and resale at enhanced prices was preferable to the imposition of a betterment charge. Later, the L.C.C. promoted the London Owners Improvement Rate or Charge Bill, but the Speaker ruled that this Measure could not properly be introduced as a private Bill. [63]

Report of the Select Committee of 1894.—A Select Committee was appointed by the House of Lords in 1894 "to consider and report whether in the case of improvements sanctioned by Parliament and effected by the expenditure of public funds, persons, the value of whose property is clearly increased by an improvement, can be equitably required to contribute to the costs of the improvements, and, if so, in what cases and under what conditions Parliament should sanction the levying of such contributions in local Acts or Provisional Orders." The Commons declined to appoint members to serve on the committee.

It will be noted that in the reference to the committee the word "betterment" is not used.

The Select Committee after hearing a number of witnesses and fully considering the evidence, made a report which has been characterised as "a carefully balanced judgment in favour of the principle of betterment and against its practical application." They reported that "the principle of betterment, in other words, the principle that persons whose property has clearly been increased in market value by an improvement effected by local authorities, should specially contribute to the cost of the improvement, is not in itself unjust, and such persons can equitably be required to do so. But the effect of a public work

(l) 42 & 43 Vict. c. 64.

(m) 45 & 46 Vict. c. 54.

(n) 13 Statutes 1015, 1071.

(o) 23 Statutes 396.

in raising the value of neighbouring lands is shown by experience to be uncertain. Whether, in any particular case, it is possible for a valuer to pronounce that such an effect has been produced by the completion of any public work, is a point upon which the evidence of eminent valuers differs greatly."

The Report contained a recommendation that the owners of the property to be charged should, within a reasonable period after the completion of the work, receive notice of the amount of the proposed charge, such period not to be so short that the effect of the improvement could not be adequately tested, nor so long as to make the property intended to be charged suffer in its market value by the suspension of the decision.

The Select Committee also considered that for the protection of owners the betterment clauses in a Bill should include provisions that if the owner has property in the immediate neighbourhood which is found to be injured in its market value by the same work, the amount of the injury should be considered in determining the charge to be imposed upon him for improvements; also that if the owner is of opinion that the charge exceeds the enhancement of market value due to the work, he should be entitled to claim that the local authority should purchase the property at the value which it bore, without regard to any improvement, with the important proviso that a local authority buying a freehold or long leasehold should not be required to dispossess the occupying tenants and should be allowed to purchase the reversion only.

The Select Committee reported, in general terms, that they were not satisfied that the principle of recoupment had ever been tried under circumstances calculated to make it successful, inasmuch as no sufficient power had ever been given to local authorities to acquire the improved properties without buying out all the trade interests, a course inevitably attended with wasteful and extravagant expenditure. [64]

Before the Select Committee presented their Report (July 19, 1894), two Bills containing betterment clauses had passed the House of Commons, namely the Manchester Corpn. Bill and the L.C.C. (Tower Bridge, Southern Approach) Bill. The two Bills were considered, after the presentation of the Report, by a Committee of the House of Lords and the betterment clauses as then passed by the Lords Committee carried into effect recommendations contained in the Report. The Bills became respectively the Manchester Corpn. Act, 1894 (*p*), and the L.C.C. (Tower Bridge, Southern Approach) Act, 1895 (*q*). [65]

In addition to those provisions which embody recommendations in the Select Committee's Report, these Bills contained provisions for a delimitation of the area in which betterment charges (in the Acts termed "improvement charges") might be imposed (*r*), and required that before the works were commenced an initial valuation should be made

(*p*) 57 & 58 Vict. c. ccix.

(*q*) 58 & 59 Vict. c. cxxx.

(*r*) The L.C.C. (Improvements) Act, 1897 (60 & 61 Vict. c. ccxlii.), authorised the council to widen Tottenham Court Road and to make an improvement charge on property in an improvement area, which was defined as meaning the lands all or any part of which front or abut upon the west side of Tottenham Court Road. The Oxford Music Hall, the principal entrance to which was in Oxford Street, had also an entrance from Tottenham Court Road, through a house of which the owners of the music hall were lessees. It was held that the improvement charge might be put on the whole property, and not merely on the house in Tottenham Court Road. *Oxford (The), Ltd. v. L.C.C.*, [1898] 2 Ch. 491; 11 Digest 148, 318.

of the properties proposed to be charged, showing separately the value of the land apart from buildings, and the value of the land and buildings as a whole (s); after the works were completed, an assessment was to be made of the enhanced value of the property and of the amount of the annual charge proposed to be made, with powers of arbitration in the event of an objection being made to the assessment. [66]

The amount of the annual charge, which was recoverable as a rent-charge, was to be reckoned at the rate of three per centum per annum on one-half of the assessed increased value. No provision for the redemption of the charge by the owner was made in the Manchester Corpn. Act, 1894, but a clause enabling him to redeem on the basis of thirty-three years' purchase was included in the Tower Bridge (Southern Approach) Act, 1895. [67]

After 1894 several local Acts were passed containing betterment provisions, in most instances framed on the precedent of the Manchester and London Acts, in particular the L.C.C. (Improvements) Act, 1899 (t), authorising the construction of Kingsway. Undoubtedly the establishment of the principle gave an impetus to the promotion of schemes of local improvements, though in practice it has been found that the costs of and incidental to the valuation and assessment are excessive in relation to the pecuniary gain to the local authority. Thus, on p. 17 of the Report referred to in the next paragraph, it is stated that while the costs of the valuations made for the purposes of 4 improvement schemes of the L.C.C. amounted to £17,800, the annual improvement charges receivable by the council under the schemes totalled £1,750 only. [68]

Ministry of Reconstruction Report, 1918.—The most recent authoritative Report (u) on the subject of betterment was made in the year 1918 by the Committee on the Acquisition and Valuation of Land for Public Purposes appointed by the Minister of Reconstruction.

The Report deals with "Betterment," "Injurious Affection" and "Recoupment" under separate headings in Sects. III. to V. of the Report. [69]

Betterment.—The committee adopted the definition of the principle of betterment contained in the Select Committee's Report of 1894, but they added that the principles of Betterment and Injurious Affection are correlative, and that their proposals as to the principle of Injurious Affection were dependent on their proposals as to the principle of Betterment.

The following is a summary of the main recommendations of the committee on the subject of betterment:

1. As a general principle where the State or a local authority by a particular improvement has increased the value of the neighbouring land, they should be entitled to participate in such increased value.
2. The principle of betterment applicable in the case of undertakings promoted by the State or by local authorities is also applicable in the case of private undertakings authorised in the public interest, such as railways.
3. The promoters should schedule the limits of the area in respect

(s) As to the valuation of a licensed house, see *In re L.C.C. and the City of London Brewery Co.*, [1898] 1 Q. B. 387; 38 Digest 566, 1049.

(t) 62 & 63 Vict. c. cclxvi.

(u) 1918, Cd. 9229, price 4d.

of which claims for betterment in respect of any property may be made, and also specify the period at the end of which they propose that claims for betterment should be made. Any person having any interest in land within the scheduled betterment area should have the right of audience before the Sanctioning Authority (a) as to such betterment, and should also have the right at any time after the works have been completed, to apply for the immediate assessment of the betterment (if any) of his property; and, further, upon payment of the capitalised value of the betterment charge, or, if there be no betterment, without payment, to obtain from the promoters a certificate of the discharge of his land from liability to betterment.

4. Either the promoters or the owner should have the right to call on the Inland Revenue Valuation Department to make and supply to both parties an official initial valuation, which if not dissented from by either party, should be binding on both parties. The same procedure should be adopted for the final valuation. On each occasion, each party should, in default of agreement, have the right to have the valuation of the property in question, or its betterment, assessed by the Assessment Tribunal to be constituted under other recommendations of the committee (b).

5. The principle of betterment should be applied to all interests in land having a market value.

6. In normal cases 50 per cent. should be the percentage of betterment to be taken from the owner, and the annual charge should be 5 per cent. of the capital value of the betterment assessed or such other rate as the Sanctioning Authority may determine.

7. Where the promoter is a local authority, the Sanctioning Authority should decide whether the whole of the betterment should be retained by the local authority or whether some proportion should be paid to the State. [70]

Injurious Affection.—On the subject of Injurious Affection, the proposals of the committee, which, as above stated, are dependent on their proposals as to betterment, include recommendations that (1) where damage is suffered by an owner whose land is taken, arising directly from the taking, compensation for injurious affection should in general follow as a matter of course; (2) where damage arising from the construction or the user of works is suffered by an owner, whether any part of his lands is taken or not, then the Sanctioning Authority should exercise a discretion, allowing compensation for direct and substantial depreciation of market value (c). [71]

Recoupment.—The following is a summary of the recommendations of the committee on the subject of recoupment:

1. As a general rule the system of Recoupment is not desirable because undertakers should not be encouraged to embark on land speculation.

2. An exception exists in the case of street improvements, where the public interest may render it desirable that the local authority should be granted power to acquire more land than is required for the

(a) As to the proposals of the committee for the establishment of a Sanctioning Authority, see their First Report, paras. 28—44 (Cd. 8998 of 1918).

(b) See now the Acquisition of Land (Assessment of Compensation) Act, 1919, s. 1; 2 Statutes 1176.

(c) As to the proposals of the committee for assessment of compensation, see their First Report, paras. 46—57 and Second Report, paras. 26—31.

purposes of the improvement, to enable it to utilise the land necessarily acquired, but not forming part of the street improvement, and to secure that the frontage to the improvement shall be adequately developed, and thereby lessen the cost to the public of the improvement.

3. Promoters who are given power to take land compulsorily for the purposes of recoupment should be authorised to purchase the freehold, or any less interest than the whole, subject to paying compensation for any interest or right injuriously affected.

An obstacle to effect being given, as regards borough and U.D.Cs. outside London, to the above recommendation in para. 2 was removed by sect. 83 of the P.H.A., 1925 (*d*), by which it is declared that the purposes mentioned in sect. 154 of the P.H.A., 1875 (*e*), include the improvement and development of frontages or of the lands abutting on or adjacent to any street, see *post*, p. 47. [72]

Later Betterment Provisions.—The public general Acts (referred to later) for the most part are directed at enabling the local authority to obtain contributions from landowners towards the expenses of a new work either by allowing an increase in the value of lands not acquired to be set off against the purchase-money of lands acquired by the local authority, or by permitting the authority to buy adjacent lands not actually required for the execution of the scheme.

Although the recommendations of the Reconstruction Committee of 1918, as to the assessment of compensation for land purchased, were carried into effect by the Acquisition of Land (Assessment of Compensation) Act, 1919 (*f*), that Act does not deal with betterment, and the provisions of the Town and Country Planning Act, 1932 (*g*), form the closest attempt to frame a scheme on the lines of the committee's suggestions. [73]

In local Acts, the course adopted in public general Acts has also been followed. The L.C.C., the protagonists of betterment, have not of recent years repeated the experiments of the years 1894 to 1900, and have been content with provisions authorising recoupment and set-off. Thus sect. 5 of the L.C.C. (Vauxhall Cross Improvement) Act, 1931 (*h*), allows the council to take the lands delineated on the deposited plans, which may be required for the purposes of the street works authorised by the Act or for the purposes of recoupment, reinstatement or exchange, or for other purposes of the Act. Sect. 15 of the same Act directs that in determining the amount of purchase-money to be paid by the council for any part of the lands of any person, the enhancement in value of the adjoining lands of such person not so acquired, or of any other lands of such person which are contiguous with such adjoining lands, arising out of the execution of the authorised street works, or arising through such adjoining lands becoming lands fronting on any new or existing street, shall, failing agreement, be determined by the arbitrator and shall be set off against the purchase-money. [74]

Local Improvement Acts promoted by the councils of boroughs outside London have in general been framed on similar lines.

But the Maldens and Coombe U.D.C. Act, 1933 (*i*), affords a recent

(*d*) 13 Statutes 1153.

(*e*) *Ibid.*, 688.

(*f*) 2 Statutes 1176.

(*g*) 25 Statutes 470.

(*h*) 21 & 22 Geo. 5, c. lv.

(*i*) 23 & 24 Geo. 5, c. lxxxvii.

example of the imposition of a betterment rate. By the Act, the council were authorised to purchase by agreement about 187 acres of land used for golf and to use the land as a municipal golf course. The preservation of the land as an open space would benefit the adjoining lands described in the Third Schedule to the Act, and by sect. 14 the council were empowered to levy an improvement rate on the occupiers of the buildings situated on the lands. The rate is based on the rateable value appearing in the valuation list for the time being in force and is payable until October, 1954. The rate in the £ is 2*s.*, 1*s.* or 6*d.* per annum according to the part of the schedule in which particular lands are entered. The Act seems to contain no provision enabling an occupier to deduct any part of the rate from rent payable to his landlord. These proposals were passed without opposition being offered to the Bill in Parliament. [75]

Improvement rates are usually imposed by local Acts authorising a council to execute sea defence works, works for the prevention of floods, or a scheme of land reclamation. In any such instance, the special rate would be imposed on all land protected by the works or reclaimed. [76]

Light Railways Act, 1896. *Set-off.*—Orders may be made by the Minister of Transport (in substitution for the Light Railway Commissioners) authorising the construction of light railways, on the application of the council of any county, borough or district, or by a company or an individual (*k*). The Lands Clauses Acts are not to apply to a light railway except so far as they are incorporated or applied by the order (*l*), but when they are so incorporated or applied, then the arbitrator in determining the amount of compensation, is to have regard to the extent to which the remaining and contiguous lands, belonging to the same proprietor, may be benefited by the light railway (*m*).

Applications to apply the compulsory purchase sections of the Lands Clauses Acts without the provisions for set-off imposed by sect. 13 (1) were refused by the Light Railway Commissioners (*n*). Where an order incorporates the Lands Clauses Acts, it may do so subject to any modifications made or authorised to be made by the Development and Road Improvement Funds Act, 1909 (*o*). As respects set-off the provision in the Act of 1909 (see *post*, p. 44) is similar to that quoted above from the Light Railways Act, 1896. [77]

Development and Road Improvement Funds Act, 1909.—This Act (*p*) makes provision for securing betterment by way of set-off or recoupment when lands are purchased compulsorily for purposes authorised by the Act.

Set-off.—Sect. 1 of the Act empowered the Treasury on the recommendation of the Development Commissioners appointed under sect. 3 of the Act to make advances by way of grant or loan to public

(*k*) Light Railways Act, 1896, s. 1; 14 Statutes 252; as amended by s. 68 of the Railways Act, 1921; 14 Statutes 362. See title LIGHT RAILWAYS.

(*l*) S. 12; 14 Statutes 257.

(*m*) S. 13 (1); 14 Statutes 257.

(*n*) *Gosforth and Ponteland Case* (1899), 1 Oxley's Light Railways, 95; 43 Digest 362, 227.

(*o*) Railways Act, 1921, s. 69; 14 Statutes 363.

(*p*) 9 Statutes 207.

authorities and associations of persons not trading for profit (*q*) for various purposes calculated to promote the economic development of the United Kingdom.

Where an advance is made for a purpose which involves the acquisition of land, the body or persons to whom the advance is made may acquire such land, and the Development Commissioners may make an order authorising the compulsory purchase of land which cannot be acquired by agreement on reasonable terms (*r*).

Under para. (2) (c) of the Schedule to the Act (*s*), any such compulsory order must contain a provision that in determining the amount of any disputed compensation, the arbitrator shall have regard to the extent to which the remaining and contiguous (*t*) lands and hereditaments belonging to the same proprietor may be benefited by the proposed work for which the land is authorised to be acquired.

Part II. of the Act authorises the Minister of Transport with the approval of the Treasury to make advances to highway authorities in respect of the construction of new roads or the maintenance or improvement of existing roads, which appear to the Minister to be required for facilitating road traffic, and the Minister himself is also empowered to construct and maintain any such new roads (*u*). Where an advance is so made for the construction of a new road the Minister may authorise its construction by the highway authority (*a*). For the purpose of constructing the same, or for the improvement of an existing road, the authority may acquire the necessary land by agreement, or if the land cannot be acquired on reasonable terms, the Development Commissioners may make an order for the compulsory acquisition thereof. Any such order must contain a provision similar to that required to be inserted in a compulsory order made under Part I. of the Act for securing betterment by way of set-off (*b*). [78]

Recoupment.—Sect. 11 of the Act also provides for recoupment by allowing the Minister, where he acquires land for a proposed new road, to acquire additional land on either side of the new road to within 220 yards from its centre by agreement or, under certain restrictions (*c*), compulsorily. This is an important provision. [79]

* **Unemployment (Relief Works) Act, 1920.**—This Act (*c*) facilitates the acquisition of and entry on land required for works of public utility

(*q*) As to the meaning of "not trading for profit" where those words occur in the Acquisition of Land (Assessment of Compensation) Act, 1919, s. 12 (2); 2 Statutes 1183, see *Metropolitan Water Board v. Berton*, [1921] 1 Ch. 299; 11 Digest 298, 2298.

(*r*) S. 5 (1); 9 Statutes 211. As to limitations with regard to land which may be taken, see s. 5 (2) (3).

(*s*) 9 Statutes 217.

(*t*) Where the word "contiguous" occurs in the Rating and Valuation (Apportionment) Act, 1928, s. 3 (3); 14 Statutes 716, it has been held that the word must be construed in its ordinary and proper sense as meaning "touching" and not in its loose sense as meaning "neighbouring." *Spillers, Ltd. v. Cardiff Assessment Committee and Pritchard*, [1931] 2 K. B. 21; Digest (Supp.); and see *Southwark Revenue Officer v. Hoe (R.) & Co., Ltd.* (1930), 148 L. T. 544; Digest (Supp.).

(*u*) S. 8 (1), as amended by the Roads Act, 1920 (printed as amended 9 Statutes 212). The word "roads" includes bridges, viaducts, subways, road ferries and footways; s. 8 (5) and Roads Act, 1920, s. 4 (see note in 9 Statutes 212). As to the meaning of "improvement of roads," see s. 8 (5) and Roads Improvement Act, 1925, s. 2; 9 Statutes 220; Road Traffic Act, 1930, s. 57; 23 Statutes 652.

(*a*) S. 10 (1); 9 Statutes 213.

(*b*) S. 11, Sched. para. (2) (c); 9 Statutes 214, 217.

(*c*) 20 Statutes 652; as amended by the Public Works Facilities Act, 1930, s. 4; 23 Statutes 774. These enactments are temporary, but their operation is

for the purpose of making better provision for the employment of unemployed persons. The works to which the Act applies are the construction or improvement of roads (including bridges, viaducts and subways) or other means of transit, the widening or other improvement of waterways, the construction or improvement of harbours, the construction of sewers or waterworks, afforestation, the reclamation or drainage of land, and any other work, being a work which a local authority has power to execute, which is approved for the purposes of the Act by the appropriate Government department as a work of public utility (*d*). In relation to the acquisition of land for some of these purposes the Act makes provision for securing betterment by way of set-off or recoupment. [80]

Set-off.—The Act confers power on Government departments and local authorities to acquire compulsorily and enter on lands required for the purposes of the Act (*e*), by adapting the powers to acquire and enter on lands which were contained in the Housing, Town Planning, etc., Acts, 1909 and 1919 (*f*). The provisions adapted have been repealed and were re-enacted in Part III. of the Housing Act, 1925, since amended by the Housing Act, 1930 (*g*).

If the purpose for which the acquisition of land by compulsory purchase is authorised is a purpose for which the same could have been acquired compulsorily under an enactment in force when the Act was passed (December 3, 1920), and that enactment provides that the arbitrator in determining the amount of any disputed compensation shall have regard to the extent to which the remaining and contiguous lands and hereditaments belonging to the same proprietor may be benefited by the proposed work for which the land is authorised to be acquired, that provision is to have effect as respects land authorised to be acquired compulsorily by the order under the Act of 1920 (*h*). [81]

Recoupment.—As already indicated on p. 44, the Minister of Transport is empowered by the Development and Road Improvement Funds Act, 1909 (*i*), to construct roads and to acquire, by agreement or compulsorily, land for that purpose, and also land on either side of the new road within 220 yards from its centre.

Under sect. 2 of the Unemployment (Relief Works) Act, 1920, if it appears to the Minister of Labour that immediate action is necessary for the purpose of dealing with unemployment and that land cannot be

extended to December 31, 1934 (except s. 1 of the Act of 1930), by the Expiring Laws Continuance Act, 1933 (23 & 24 Geo. 5, c. 48).

(*d*) S. 5 (1). Land cannot be acquired compulsorily or entered upon for these purposes in exercise of the powers of the Act unless the Minister of Labour certifies that having regard to the amount of unemployment existing in any area the provisions should be put into operation, nor can an order for compulsory acquisition be made unless such an order could have been made for compulsory acquisition for the same purpose under an enactment already in force when the Act was passed. S. 1, proviso.

(*e*) S. 1.

(*f*) The provisions adapted were those relating to procedure for compulsory acquisition of land for the purposes of Part III. of the Housing of the Working Classes Act, 1890, by the M. of H. and local authorities, and to entry on land acquired for those purposes.

(*g*) 13 Statutes 1034; 23 Statutes 396.

(*h*) S. 1, proviso (*c*); 20 Statutes 652. See Development and Road Improvement Funds Act, 1909, *ante*.

(*i*) Ss. 8 (1) (*b*), 11 (1), (5); 9 Statutes 212, 214.

acquired under sect. 1 of that Act with such expedition as the case may require, he may certify accordingly. Thereupon the Minister of Transport, or a local authority with his approval, may enter upon and take possession of any such land as may be required for or in connection with the construction of any road which either of them has power to construct, or which is required by the local authority for the improvement of any road, with a view to the employment of unemployed persons in the construction or improvement of the road. Neither the Minister nor the local authority may, however, enter on any permanent building or structure (*k*) or enter on or take possession of any land unless that land could, under some enactment in force at the commencement of the Act (December 3, 1920) have been authorised to be acquired compulsorily for or in connection with the construction or improvement of a road (*l*). The Minister or a local authority, having entered upon land in the exercise of the foregoing powers, are empowered to acquire the land compulsorily (*m*), and a compulsory purchase order is unnecessary.

Recoupment could thus be secured by the Minister of Transport, and it has been suggested that the above provision has the effect of conferring upon such local authorities as are highway authorities the powers of the Minister of Transport to acquire, by agreement or compulsorily, lands on either side of a proposed new road within 220 yards of the middle of the road, and so to acquire additional lands for recoupment. It is improbable that this result was intended by Parliament and the absence of any legal decision indicates that few local authorities (if any) have had the hardihood to act on this reading of the Act of 1920, as a landowner would be almost certain to resist the adoption of this course by the local authority. [82]

Roads Improvement Act, 1925. *Set-off.*—A county council or a highway authority may prescribe a building line (*i.e.* a line beyond which buildings may not project) in relation to either side of any part of a highway maintainable by them (*n*), subject to certain specified conditions. Any person who proves that his property is injuriously affected by the prescription of such a building line, if he makes a claim within six months of the prescription, or in the case of an owner, occupier or lessee, within six months after service of notice of the prescription upon him, is entitled to recover from the county council or the highway authority by whom the building line was prescribed, compensation for the injury sustained.

In any such case, however, when the compensation is determined there is to be taken into account any benefit accruing to the person to whom the compensation is payable by reason of any improvement made or about to be made to the highway (*o*). It is to be noted that the improvement to be taken into consideration is not merely the improvement immediately adjacent to the land of an owner, occupier or lessee, but extends to any improvement of any nature to any part of the highway which can be shown to have benefited the person to

(*k*) The expression "building or structure" does not include fences.

(*l*) S. 2 (1). Seven days' notice of intention to enter must be given to the owner and occupier of the land, s. 2 (2).

(*m*) S. 2 (3), (4), (5).

(*n*) S. 5; 9 Statutes 223; Prescription of Building Lines Order, 1927; S.R. & O., 1927, No. 21.

(*o*) S. 5 (5), proviso (*b*); 9 Statutes 225.

whom compensation is payable. The amount of the compensation is, in default of agreement, to be determined by an official arbitrator appointed under the Acquisition of Land (Assessment of Compensation) Act, 1919 (*p*). [83]

P.H.A., 1925. *Set-off*.—Where sect. 33 of the P.H.A., 1925, has been adopted by the council of a borough or district or has been applied by the Minister of Health to any rural district or contributory place therein (*q*), the authority may prescribe an improvement line (*i.e.* the line to which the street will at some future date be widened) in relation to either side of any street repairable by the inhabitants at large or at or within 15 yards from any street corner (*r*).

These powers may be exercised by a county council in relation to any county road maintained by them, but the county council must consult the district council before the preparation by them of an improvement plan in respect of any such road (*s*).

The local authority or county council may purchase by agreement or compulsorily without an order, any land not occupied by buildings, lying between the improvement line and the existing boundary of the street and on such purchase they are liable to pay compensation for the land together with such sums for injurious affection as may be found to be due (*r*).

After the improvement line has been prescribed no new building, erection or excavation (other than excavations made by statutory undertakers) may be placed or made nearer to the centre of the street than the improvement line without the consent of the local authority or county council, and any person whose property is injuriously affected by the prescription of the line is entitled to compensation for such injurious affection (*r*).

In the assessment of compensation in respect of the purchase of land, or in respect of injurious affection of land by the prescribing of an improvement line, the benefits accruing to the person to whom such compensation shall be payable by reason of the widening or improvement of the street are to be fairly estimated and are to be set off against any compensation found to be due either in respect of the price of the land or injurious affection (*t*). [84]

Recoupment.—Councils of counties, boroughs and urban districts may purchase any premises for the purpose of widening, opening, enlarging or otherwise improving any street or for the purpose of making a new street (*u*), and although before the year 1925 it was the practice of the Local Government Board and the M. of H. to permit lands adjoining a street proposed to be widened, although not necessary for the widening itself, to be included in a provisional order for compulsory purchase (*a*), their power to include such lands was the subject of some doubt. In order to remove that doubt, it was declared by the P.H.A., 1925 (*b*), that the purposes of sect. 154 above mentioned included the

(*p*) 2 Statutes 1176.

(*q*) P.H.A., 1925, ss. 3, 4; 13 Statutes 1116.

(*r*) S. 33; 13 Statutes 1128.

(*s*) S. 34; 13 Statutes 1130.

(*t*) S. 33 (10); 13 Statutes 1129.

(*u*) P.H.A., 1875, s. 154; 13 Statutes 688.

(*a*) *Ibid.*, s. 176; 13 Statutes 700; repealed and re-enacted by the L.G.A., 1933, ss. 159, 160.

(*b*) S. 83; 13 Statutes 1153.

improvement and development of frontages or of the lands abutting on or adjacent to any street.

The provisions of sect. 154 of the P.H.A., 1875, are now exercisable in rural districts exclusively by county councils and in urban districts as respects county roads exclusively by county councils (*c*) unless the county council have delegated their road functions to the district council, in which case the district council may exercise those powers as agents of the county council (*d*).

In so far as the powers of sect. 154 are exercisable by a county council or by a district council as agents for a county council, the word "street" includes county roads and county bridges, and in respect of the making of new streets, the sanction of the Minister of Health is not necessary (*e*).

Specific statutory power is therefore now given to county councils, borough councils, urban district councils and to some rural district councils to acquire lands adjoining street improvements or adjoining the sites of proposed new streets, with the object of recouping in part the cost of the improvement or the new street from the enhanced value of land so purchased. [85]

Housing Act, 1930. *Set-off*.—On a compulsory acquisition of land by a local authority under Part I. (Clearance or Improvement of Unhealthy Areas) of the Housing Act, 1930 (*f*), not being land comprised in a clearance area which by sect. 1 (1) of the Act (*f*) means an area in which all buildings are to be demolished, the arbitrator, in assessing the amount of compensation to be paid, must have regard to and make an allowance in respect of any increased value which in his opinion will be given to other premises of the same owner by the demolition by the local authority of any building (*g*). This provision does not extend to land within a clearance area because sect. 46 of the Housing Act, 1925 (*h*), as modified by Part I. of the Third Schedule to the Act of 1930, provides a specially framed code of compensation owing to the houses being dangerous or injurious to health. Where the council have decided to purchase a clearance area, sect. 3 of the Act of 1930 (*i*) allows them also to buy any land surrounded by the clearance area, so as to secure a cleared area of convenient shape and dimensions, and any adjoining land reasonably necessary for the satisfactory development or user of the cleared area. Recoupment is thus available to the council, if the conditions are promising. [86]

Public Works Facilities Act, 1930.—This Act (*k*) authorises local authorities and statutory undertakers (*l*) to purchase lands compulsorily under a compulsory purchase order confirmed by the Secretary of State or other Minister in charge of the Government department concerned with the functions of the authority or undertakers to which the order

(*c*) L.G.A., 1929, ss. 30, 31; 10 Statutes 904, 905.

(*d*) Ss. 35, 36; 10 Statutes 910, 911.

(*e*) Schedule I., Parts I. and III.; 10 Statutes 975, 977.

(*f*) 23 Statutes 396.

(*g*) S. 12 (3); Sched. III., Part II., 4; 23 Statutes 406, 441.

(*h*) 13 Statutes 1028.

(*i*) 23 Statutes 400.

(*k*) 23 Statutes 769. The Act is a temporary measure. It has from time to time been extended, and (excepting s. 1 thereof) is now in force until December 31, 1934, by virtue of the Expiring Laws Continuance Act, 1933.

(*l*) Statutory undertakers means any persons authorised by any public, general or local Act to construct, work or carry on any railway, canal, inland navigation, dock, harbour, tramway, gas, electricity, water or other public undertaking. *Ibid.*

relates (*m*), and thus expedite the execution of works by which employment would be given to a number of workers.

A compulsory purchase order may authorise the purchase of land for (*inter alia*) any purpose for which the local authority or statutory undertakers could have been authorised to acquire the land compulsorily by an order having effect (with or without the approval of Parliament) under an enactment in force immediately before the passing of the Act of 1930 (*n*).

If any land authorised to be acquired by an order might have been acquired compulsorily under any enactment in force immediately before the passing of the Act, which enactment contains a provision that the arbitrator, in determining the amount of any disputed compensation, shall have regard to the extent to which the remaining and contiguous lands and hereditaments belonging to the same proprietor may be benefited by the proposed work for which the land is authorised to be acquired, that provision is to have effect as respects land authorised to be acquired compulsorily by the order (*o*). [87]

Town and Country Planning Act, 1932 (*p*).—This Act repealed the Town Planning Act, 1925 (*q*), as from April 1, 1933, but where on that date any claim in respect of betterment under the Act of 1925 was outstanding, or the time for making such a claim had not expired, the provisions of the Act of 1925 continue to apply (*r*).

The Act of 1925 provided that when a Town Planning scheme was made in accordance with its provisions, and property was thereby increased in value, the authority defined in the scheme as the responsible authority for putting the same into force (*s*) were entitled to recover from the owner, one-half of the amount of the increase, on making a claim within the time (if any) limited for that purpose by the scheme (*t*). Any question as to the amount of the increase in the value of the property was to be decided in accordance with the Acquisition of Land (Assessment of Compensation) Act, 1919, unless the parties otherwise agreed (*u*). [88]

The Act of 1932 contains a more complete and elaborate code with regard to betterment than any previous public Act, and it will be interesting to see whether the difficulties, which have attended previous experiments in this direction, have been overcome. Sect. 25 also authorises the purchase of land of which portions may in some circumstances be available for recoupment. Sect. 21 of the Act gives a right to responsible authorities (*a*) to recover betterment where property is increased in value by the coming into operation of the provisions of a scheme made under the Act (other than provisions regulating advertisements or advertising hoardings) (*b*), or by the execution by a responsible authority of any work under a scheme. [89]

(*m*) Ss. 2, 6; 23 Statutes 773, 775.

(*n*) S. 2, Sched. I., Part I.; 23 Statutes 773, 777.

(*o*) S. 2 (1) (*b*). See *ante*, "Development and Road Improvement Funds Act, 1909," and "Unemployment (Relief Works) Act, 1920."

(*p*) 25 Statutes 470.

(*q*) 13 Statutes 1079.

(*r*) S. 54; 25 Statutes 522.

(*s*) S. 5 (2) (*b*); 13 Statutes 1081.

(*t*) S. 10 (3); 13 Statutes 1085.

(*u*) S. 10 (4); 13 Statutes 1085; Town Planning (Determination of Questions as to Compensation) Rules, 1926; S.R. & O., 1926, No. 439/L.9.

(*a*) For the meaning of "responsible authority," see s. 11 (2), (3), and s. 48; 25 Statutes 485, 515.

(*b*) S. 47 (7); 25 Statutes 514.

The betterment is payable by the person whose property is so increased in value, and is to be a sum not exceeding 75 per cent. of the amount of such increase (c). [90]

Following the recommendation of the Ministry of Reconstruction Committee in their Report made in 1918 (d), the Act establishes a correlation between injurious affection and betterment by giving similarly wide powers to owners to claim and recover compensation, if their property is injuriously affected either by the coming into operation of any provision contained in a scheme, or by the execution of any work under a scheme, being a provision or work which infringes or curtails their legal rights in respect of the property (e). For these provisions, see the title COMPENSATION AND TOWN PLANNING. [91]

Claim for Betterment.—A claim for betterment must be made within 12 months after the date on which the provision in the scheme affecting the value of the property came into operation, or within such longer period as may be specified in the scheme, or within twelve months after the completion of the work giving rise to the claim (f).

The claim is to be made by the service of a notice by the responsible authority upon the owner, stating the grounds of the claim and the amount claimed (g). [92]

Deferment and Withdrawal of Claim.—An owner upon whom a claim for betterment has been made by the responsible authority, may give notice to the authority to defer the claim, whereupon the claim must for the time being be withdrawn. Such a notice can be given in respect of any claim for betterment, unless the owner has claimed by way of compensation under the Act and in respect of injurious affection (other than injurious affection immediately suffered) an amount equal to or greater than the amount claimed for betterment and unless the claim for compensation has either been allowed in an amount not less than the amount claimed for betterment or is outstanding (h).

A notice for deferment of a claim for betterment must be given by the owner to the responsible authority within 28 days after service on the owner of notice of the claim for betterment, and on receipt of the notice the claim must, for the time being, be treated as withdrawn (i), and is unenforceable unless there is a renewal of the claim (see *post*).

If an owner is not entitled to give notice of deferment of a claim, or being entitled does not give such a notice, proceedings to determine the right to betterment and to assess the amount thereof, if any, will not be delayed. [93]

Renewal of Claim.—Where a claim has been deferred and withdrawn in pursuance of a notice given by an owner, the authority are entitled to make a fresh claim :

(c) S. 21 (1); 25 Statutes 497. If a scheme revokes the provisions of a previous scheme and contains provisions the same as, or substantially similar to, the provisions revoked, no betterment is payable for enhancement of value by reason of these provisions, unless at the date of the revocation a claim for betterment is outstanding, or the time limited for making a claim under the original scheme has not expired, and a claim is made within the time so limited. S. 21 (10).

(d) See "The Ministry of Reconstruction Report, 1918," *ante*, p. 40.

(e) S. 18; 25 Statutes 492.

(f) S. 21 (1); 25 Statutes 497.

(g) S. 22 (1); 25 Statutes 500.

(h) S. 21 (1), proviso. As to compensation for injurious affection, see s. 18.

(i) *Ibid*.

- (i.) On the taking effect at any time within 14 years from the date of service of the original notice, of a disposition of the property (*k*).
- (ii.) If within the said period of fourteen years a change of use of the property takes place (*l*). If, however, the new use of the property is of a character similar to that of the previous use (*m*) or is a use as arable, meadow or pasture grounds, or market gardens, nursery grounds, orchards, allotments, plantations, woods, the growth of saleable underwood, or allotment gardens under the Allotments Act, 1922, or (if the land exceeds one quarter of an acre) for the purpose of poultry farming, the change of use does not give rise to a claim for betterment (*n*) nor does a claim arise on a change of use of property belonging to a statutory undertaker (*o*).
- (iii.) If before the expiration of 5 years from the date of the original claim in the case of property which at the date of that claim was used for business or industry, no claim has been made under headings (i.) or (ii.) above. A claim under this head must be made within twelve months after the expiration of the period of five years (*p*). No claim can be made under this head in respect of property belonging to a statutory undertaker (*q*). [94]

When a notice for deferment of the claim for betterment has been given, the person giving such notice or the person upon whom the property has last devolved before the date on which the disposition thereof takes effect or a change of use takes place (*r*), must within one month after such disposition or change of use, give written notice thereof to the responsible authority and must, if a demand is made by the authority, not later than the expiration of two months after the giving of the notice, furnish to the authority such particulars as they may reasonably require (*s*). These provisions apply equally to a disposition or change of use of the whole or part of any property in respect of which notice to defer a claim for betterment has been given (*t*). [95]

Except in cases where a disposition is made by way of lease or tenancy agreement for a term of less than 7 years, a renewed claim may be made by the responsible authority not later than 12 months from the date on which notice is given to them of the disposition of the property, or of the taking place of a change of use, or, where particulars are demanded by the authority, within 12 months of the date on which such particulars are furnished (*u*).

Where the disposition takes the form of a lease or tenancy agreement for less than 7 years, the renewed claim may not be made earlier than

(*k*) S. 21 (2) (a). For the purposes of the section, the word "disposition" means a sale, including a sale in consideration of a rentcharge or other periodical payment, or a lease or tenancy agreement for not less than three years. See s. 21 11); 25 Statutes 499.

(*l*) S. 21 (2) (b).

(*m*) S. 21 (12).

(*n*) S. 21 (2), proviso (i.).

(*o*) *Ibid.*, proviso (ii.).

(*p*) S. 21 (2) (c).

(*q*) S. 21 (2), proviso (ii.).

(*r*) S. 21 (11).

(*s*) S. 21 (7).

(*t*) S. 21 (9).

(*u*) S. 21 (8).

the expiration of the seventh year from the date of the commencement of the term (a). [96]

When a renewed claim is made on a change of use of property taking place, the amount which may be recovered for betterment is a sum not exceeding 75 per cent. of the amount by which the property has for the purpose of its new use been increased in value by the coming into operation of the provision, or by the execution of the work, in respect of which the original claim was made. Such a renewed claim is not final, and further claims for betterment may be made on every subsequent change of use, within 14 years from the date of the original notice by the owner requiring a deferment of the claim, unless and until a claim is made on a disposition of the property (b), after which no further claim for betterment can be made (c). [97]

A renewed claim for betterment on a disposition of property may be made notwithstanding the fact that a claim or claims for betterment have already been made on a change of use of property. A renewed claim made on the disposition of property, or in the case of property used for business or industry, made on the expiration of 5 years from the service of the notice to defer the claim, is final. The amount which may be recovered on such a claim is a sum not exceeding 75 per cent. of the amount by which the property has been increased in value by the coming into operation of the provision or by the execution of the work in respect of which the original claim was made, and the date of the renewed claim is the date by reference to which the increase in value is to be determined (d).

When a renewed claim is made which is final, the responsible authority must give notice to the person who gave the notice for deferment of the claim, that no further notice of disposition or change of use need be given (e). [98]

Assessment of Claims.—Any question as to the right of a responsible authority to recover betterment and as to the amount thereof, is to be referred to and determined by an official arbitrator appointed in accordance with the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919 (f), unless all parties concerned otherwise agree, and the arbitrator may fix the manner of payment whether immediate or by instalments spread over a period not exceeding 30 years. The arbitrator has all the powers with respect to procedure, including the hearing of claims and objections together and costs and the statement of special cases, which he has under the Act of 1919 (g).

In assessing the amount of betterment, account is to be taken of any principal sum already paid or payable to the responsible authority for betterment, and of any gift of property (real or personal) or concession made or works executed under arrangement with the responsible authority by the person against whom the claim for betterment is made or his predecessor in title, with a view to facilitating the making or carrying into effect of the scheme (h), and of any contribution made by an authority in connection with an interim development order (i).

(a) S. 21 (8); 25 Statutes 499.

(b) S. 21 (4).

(c) S. 21 (3).

(d) S. 21 (3).

(e) S. 21 (7), proviso.

(f) 2 Statutes 1176. See title COMPULSORY PURCHASE OF LAND.

(g) Town and Country Planning Act, 1932, s. 23; 25 Statutes 501.

(h) S. 21 (5), s. 11 (1), Sched. II.; 25 Statutes 498, 484, 528.

(i) S. 23 (2); 25 Statutes 501.

The arbitrator must also take into consideration any undertaking which either the local authority or the joint committee by whom the scheme is prepared, or the responsible authority, or the county council or person against whom the claim is made, may have given (*k*).

Protection is given against a duplication of claims for betterment on the coming into operation of a supplementary scheme (*l*) or a supplementary order (*m*) by providing that the arbitrator shall take into account any amount which the responsible authority have recovered or are entitled to recover by the coming into operation of the original scheme or any other scheme or order supplemental thereto (*n*).

If a sum awarded as betterment is to be paid by instalments, interest on the amount unpaid is chargeable at a rate to be fixed by the Treasury, but the whole amount outstanding may be paid, with interest due to the date of payment, after six months' notice has been given to the authority by the person liable (*o*).

Schemes must contain provisions charging on land the value of which is increased by the operation of the scheme, any sum required to be paid in respect of that increase, and for that purpose the provisions of any enactments dealing with charges for improvements on land may be applied by the scheme, with the necessary adaptations (*p*).

Any amount due to an authority for betterment may be recovered summarily, as a civil debt (*q*). [99]

Application of Betterment Moneys.—Sums received by way of betterment are to be applied in such manner as the M. of H. may approve towards the discharge of debt or otherwise for any purpose for which capital money may be applied (*r*). [100]

(*k*) S. 23 (2) ; 25 Statutes 501.

(*l*) See s. 9 ; 25 Statutes 481.

(*m*) See s. 14 ; 25 Statutes 488. A supplementary order forms part of the scheme to which it relates ; sub-s. (3) ; 25 Statutes 488.

(*n*) S. 23 (2) (ii.) ; 25 Statutes 501. A supplementary scheme or order may be made by a body other than the responsible authority for the original scheme, but the responsible authority is the only body entitled to claim betterment.

(*o*) S. 21 (6) ; 25 Statutes 498.

(*p*) S. 11, Sched. II., 21 ; 25 Statutes 484, 529.

(*q*) S. 23 (3) ; 25 Statutes 501.

(*r*) S. 32 ; 25 Statutes 505.

BETTING

	PAGE		PAGE
PRELIMINARY NOTE - - -	53	BYE-LAWS - - -	54
STREETS AND PUBLIC PLACES - -	54	LONDON - - -	55

See also titles : DISORDERLY HOUSES ;
HIGHWAY NUISANCES.

Preliminary Note.—Betting *per se* is a subject with which local authorities have little concern, but they are interested in the enforcement of the law against betting in streets and in public places under their control where the practice is a nuisance that can be dealt with. Bye-laws on the subject, as indicated *infra*, are not now necessary. [101]

Streets and Public Places.—Any person frequenting or loitering in streets or public places, on behalf either of himself or any other person, for the purpose of bookmaking, or betting, or wagering, or agreeing to bet, or wager, or paying or receiving or settling bets is liable on summary conviction to a fine not exceeding £10 in the case of a first offence, and not exceeding £20 in the case of a second offence, and is liable in the case of a third or subsequent offence [that is, under the statute (a)] on conviction on indictment to a fine not exceeding £50, or to imprisonment with or without hard labour for a term not exceeding six months without the option of a fine, or on summary conviction to a fine not exceeding £30, or to imprisonment with or without hard labour for a term not exceeding three months without the option of a fine, and is liable in any case to forfeit all books, cards, papers and other articles relating to betting found in his possession (b). In any case where it is proved that the person whilst committing the offence had any betting transaction with a person under the age of sixteen years, the offender is liable to the same penalties as a person convicted of a third or subsequent offence (b). [102]

"Street" includes any highway and any public bridge, road, lane, footway, square, court, alley, or passage, whether a thoroughfare or not; and "public place" includes any public park, garden, or sea-beach, and any unenclosed ground to which the public for the time being have unrestricted access, and every enclosed place (not being a public park or garden) to which the public have a restricted right of access, whether on payment or otherwise, if at or near every public entrance there is conspicuously exhibited a notice prohibiting betting therein (c). [103]

The gist of the offence of frequenting is the doing it often (d). Being in a place sufficiently long to effect the object aimed at is frequenting (e). Distributing in a public street handbills containing offers by bookmakers to receive bets was held to be an offence under the enactment (f). [104]

Any person who appears to the court to be under sixteen is to be deemed to be under that age unless the contrary is proved or the person charged satisfies the court that he had reasonable ground for believing otherwise (g).

Any constable may arrest without warrant any person committing an offence, and seize and detain any article liable to be forfeited (h). [105]

The above provisions do not apply to racecourses for horses on race days or to adjacent ground (i). [106]

Bye-Laws.—Bye-laws for good rule and government and for the prevention of nuisances under the Municipal Corporations Act, 1882, sect. 23 (k), and the L.G.A., 1888, sect. 16 (l), made by town councils

(a) *R. v. Stone, Ex parte Seton* (1908), 99 L. T. 88; 25 Digest 434, 319.

(b) Street Betting Act, 1906, s. 1 (1); 8 Statutes 1170.

(c) *Ibid.*, s. 1 (4); 8 Statutes 1171.

(d) *White v. Morley*, [1899] 2 Q. B. 34, 40; 25 Digest 436, 330.

(e) *Airton v. Scott* (1909), 100 L. T. 393; 25 Digest 436, 334.

(f) *Dunning v. Sweetman*, [1909] 1 K. B. 774; 25 Digest 434, 318.

(g) S. 1 (3); 8 Statutes 171.

(h) S. 1 (2), *ibid.*

(i) S. 2, *ibid.*

(k) 10 Statutes 584; now repealed by L.G.A., 1933, and replaced by s. 249 thereof.

(l) *Ibid.*, 698; now repealed by L.G.A., 1933, and replaced by s. 249 thereof.

and county councils for prohibiting the frequenting and use of streets and public places for purposes of betting and wagering have been upheld (*m*), but such bye-laws are now unnecessary, and since the passing of the Street Betting Act, 1906, have been excluded from the model series of bye-laws of the H.O. under the Acts of 1882 and 1888. [107]

London.—In addition to the foregoing, sect. 23 of the Metropolitan Streets Act, 1867 (*n*), provides that any three or more persons assembled together in any part of a street within the Metropolis for the purpose of betting are to be deemed to be obstructing the street, and each of such persons is liable to a penalty not exceeding five pounds. Any constable of the City Police Force, within the City of London, and any constable of the Metropolitan Police Force, elsewhere in the Metropolis, may take into custody, without warrant, any person committing an offence in the view of such constable.

Bye-laws made under the L.G.A., 1888, sect. 16, and the Municipal Corpn. Act, 1882, sect. 23, referred to above, are in force within the county of London [108]

(*m*) *Godwin v. Walker* (1896), 60 J. P. Jo. 308; 25 Digest 436, 332; *Burnett v. Berry*, [1896] 1 Q. B. 641; 25 Digest 435, 326; *Jones v. Walters* (1898), 62 J. P. 374; 25 Digest 435, 329; *White v. Morley*, [1899] 2 Q. B. 34; 25 Digest 436, 330; *Thomas v. Sutters*, [1900] 1 Ch. 10; 25 Digest 435, 327; *Hickey v. Hay* (1900), 65 J. P. 232; 25 Digest 435, 328.

(*n*) 19 Statutes 161.

BICYCLES

	PAGE		PAGE
INTRODUCTORY - - -	55	SIGNALLING APPROACH - - -	56
BICYCLES ON FOOTPATHS - - -	55	LIGHTING - - -	56
HIGHWAY CODE - - -	56	LONDON - - -	57

See also title : ROAD TRAFFIC.

Introductory.—This title relates only to bicycles which are not mechanically propelled. It thus excludes motor cycles and bicycles with an auto-wheel attached, which latter come within the definition of motor cycle in the Road Traffic Act, 1930 (*a*). [109]

Bicycles on Footpaths.—A bicycle is a “carriage” within the Highway Acts (*b*). Hence the rider of a bicycle is liable to a penalty for wilfully leading or driving a “carriage” upon any footpath or causeway by the side of any road (*c*), under sect. 72 of the Highway Act, 1835 (*d*); or if on any part of the highway he, by negligence or wilful

(*a*) S. 2 (1) (*f*); 23 Statutes 609.

(*b*) L.G.A., 1888, s. 85 (1); 10 Statutes 755.

(*c*) See *R. v. Pratt* (1867), L. R. 3 Q. B. 64; 26 Digest 438, 1556.

(*d*) 9 Statutes 86.

misbehaviour, causes any hurt or damage ; or if he does not keep his bicycle on the left or near side of the road ; or if he rides furiously so as to endanger the life or limb of any passenger (sect. 78) (e). Offenders whose names are unknown, may be seized and detained by any person witnessing the offence, and forthwith taken before a justice (sect. 79).

Provisions somewhat similar to the above are included in sect. 28 of the Town Police Clauses Act, 1847 (f), as incorporated with the P.H.A., 1875, by sect. 171 thereof (g), and applied to urban districts, including boroughs. By these provisions, it is an offence, punishable summarily, in any street, to the obstruction, annoyance or danger of the residents or passengers, to ride or drive furiously any "carriage" (which expression here also would presumably include a bicycle); or to drive any carriage upon the footway of any street. [110]

Highway Code.—The Highway Code issued by the Minister of Transport with the authority of Parliament, in pursuance of sect. 45 of the Road Traffic Act, 1930 (h), contains the following rules for "pedal cyclists," failure to observe which may, in any proceedings, civil or criminal, including proceedings for an offence under that Act, be relied upon by any party to the proceedings as tending to establish or to negative any liability in question in those proceedings (sect. 45 (4)). These rules are to the following effect :

The cyclist is to pay careful attention to the rules in the code headed "speed," "signals," "overtaking," "cross roads," "white lines."

He is to give warning of his approach whenever necessary, to get into single file except on very broad roads, and not to ride more than two abreast ; not to wobble ; not to keep close behind fast moving vehicles or to hold on to motor vehicles even if stationary when the traffic is held up ; not to cycle along the narrow spaces between stationary vehicles in a traffic block ; in the dark to keep well to the left of the road as a bicycle is not easily visible, and if no red rear lamp is used to keep the reflector clean and properly fixed ; when passing or overtaking pedestrians or animals to give a wide clearance ; to show special consideration to horses and horse-drawn vehicles. It is an offence under sect. 29 of the Road Traffic Act, 1930 (hh), to take hold of a motor vehicle for the purpose of being towed without reasonable cause, and also under sect. 10 of the Road Transport Lighting Act, 1927, to ride at night without either a red rear lamp or an unobscured and efficient red reflector. [111]

Signalling Approach.—The Minister of Transport is empowered by sect. 59 (1) (b) of the Road Traffic Act, 1930 (i), to make regulations prescribing the appliances to be fitted to bicycles for signalling their approach when used on roads, and for securing that the riders shall by such appliances give audible and sufficient warning of their approach. No regulations under this provision have so far been made ; but see in this connection the rules for pedal cyclists above cited from the Highway Code. [112]

Lighting (j).—Under the Road Transport Lighting Act, 1927, sects. 1 (1), and 5 (1) (k), every bicycle in any road must carry during "the hours

(e) 9 Statutes 91.

(g) 13 Statutes 696.

(hh) *Ibid.*, 632.

(j) The Road Traffic Bill before Parliament affects the lighting of bicycles.

(k) 19 Statutes 100, 102.

(f) 19 Statutes 38.

(h) 23 Statutes 643.

(i) *Ibid.*, 654.

of darkness " a lamp showing to the front a white light visible from a reasonable distance, and also either a lamp showing to the rear a red light visible from a reasonable distance, or an unobscured and efficient red reflector. "The hours of darkness" means, as respects the period of "summer time," the time between one hour after sunset and one hour before sunrise; and as respects the remainder of the year, the time between half an hour after sunset and half an hour before sunrise. "Summer time" is the period beginning at 2 o'clock, Greenwich mean time, in the morning of the day next following the third Saturday in April, or, if that day is Easter day, the day next following the second Saturday in April, and ending at 2 o'clock, Greenwich mean time, in the morning of the day next following the first Saturday in October (*kk*). The expression "sunset" as used above means sunset by local time (*l*).

No lamp need be carried if the bicycle is being wheeled by a person on foot as near as possible to the near or left-hand edge of the carriage-way (Road Transport Lighting Act, 1927, sect. 5 (1) (*c*)) (*m*). Regulations as to reflectors have been made by the Minister of Transport under sect. 9 of the Act (*n*). These contain provisions as to the construction and reflecting power of reflectors, the size of the aperture or apertures of the frame of the reflector, and its position on the bicycle.

[113]

London.—There are no special statutory provisions which apply only to bicycles in London. The London Traffic Act, 1924, does not refer to bicycles. [114]

(*kk*) Summer Time Act, 1922, s. 3, as amended by the Summer Time Act, 1925, s. 1 (2); 19 Statutes 420, 421.

(*l*) See *Gordon v. Cann* (1899), 68 L. J. Q. B. 434; 42 Digest 936, 81.

(*m*) 19 Statutes 102.

(*n*) Road Vehicles Lighting Regulations, 1929 (S.R. & O., 1929, No. 723); Road Vehicles Lighting (Amendment) Provisional Regulations of July 28, 1933.

BILL POSTING

	PAGE		PAGE
SCOPE OF ARTICLE - - -	57	ADVERTISEMENTS ON LICENSED	
		HOARDINGS - - -	58
NUISANCES IN CONNECTION WITH		SAFETY OF STREET HOARDINGS -	58
BILL POSTING - - -	58	LONDON - - -	59

See also titles : ADVERTISEMENTS ;
HIGHWAY NUISANCES ;
OFFENSIVE BEHAVIOUR ;
RATING OF SPECIAL PROPERTIES.

Scope of Article.—This article deals generally with the regulation of bill posting and hoardings. Further powers which may be exercised in relation to the display of advertisements of an indecent or offensive nature are dealt with in the titles HIGHWAY NUISANCES and OFFENSIVE BEHAVIOUR.

The liability for rates in respect of advertising stations is dealt with in the title RATING OF SPECIAL PROPERTIES. [115]

Nuisances in connection with Bill Posting.—Model bye-laws, prepared by the H.O. for the guidance of town councils and of county councils (*a*), for good rule and government and for the prevention of nuisances, contain clauses prohibiting persons from affixing placards upon any building, wall, fence, gate, door, pillar, tree, or post in or abutting on any street or public place without the permission of the owner or occupier or person having the charge thereof or unless authorised so to do by law; and from pulling down or defacing any authorised public notice on any wall or other place where such notice may be lawfully affixed.

To tear down or cover over bills lawfully posted will justify a summary conviction for maliciously damaging them (*b*). [116]

Advertisements on Licensed Hoardings.—Where any corp., board, vestry, urban sanitary or other authority, acting under any power vested in them by any local or general Act, grant a licence for the temporary erection of any hoard, gantry, scaffold, or other structure upon or over any part of any public highway, or upon or over any lands or hereditaments which are their property, the authority may include in the licence conditions (*i*.) prohibiting the affixing of any advertisement to such structure, or (*ii*.) sanctioning the affixing of advertisements thereto upon payment of such sum, and on such conditions as the authority may determine (*c*). [117]

Any person using such structure otherwise than as permitted by the licence, is liable on summary conviction to a penalty not exceeding £5, and a further sum not exceeding 40s. for every day during which the offence shall be continued after notice in writing to discontinue such use (*d*). "Person" includes any body of persons whether corporate or unincorporate (*e*).

Payments received for licences and penalties recovered are to be applied in aid of the rate levied for the repair of the highway (*f*).

The reference to hoardings "licensed" under general Acts is somewhat obscure, for the powers of urban sanitary authorities under the public general Acts applicable outside London do not authorise the issue of a licence where a hoarding is erected (*g*).

Local Acts usually give an authority power to forbid the erection of any hoarding, or hoardings over a certain height, without a licence; they may deal also with "fly" posting, *i.e.* the posting of bills without permission. [118]

Safety of Street Hoardings.—Where sect. 32 of the P.H.A. Amdt. Act, 1907, is in force (*h*), the use of any hoarding or similar structure which is in, or abuts on, or adjoins any street is prohibited for any purpose, under a penalty not exceeding £5, and a daily penalty not exceeding 20s., unless it is securely fixed to the satisfaction of the local authority. This provision therefore applies not merely to hoardings

(*a*) See L.G.A., 1933, s. 249; 26 Statutes 439; which has superseded the Municipal Corporations Act, 1882, s. 23, and the L.G.A., 1888, s. 16.

(*b*) *R. v. Milvain JJ.* (1884), 1 T. L. R. 159; 15 Digest 1038, 11,718.

(*c*) Advertising Stations (Rating) Act, 1889, s. 5; 14 Statutes 598.

(*d*) *Ibid.*

(*e*) S. 2; 14 Statutes 597.

(*f*) S. 5; 14 Statutes 598.

(*g*) See, *e.g.*, P.H.A. Amendment Act, 1890, s. 34; 13 Statutes 837; Towns Improvement Clauses Act, 1847, s. 80; 13 Statutes 556.

(*h*) 13 Statutes 923.

which form the *de facto* boundary of a street (*i*), but also to those erected close to a street though separated from the street by a boundary fence (*k*). [119]

London.—The Metropolis Management Amendment Act, 1862, sect. 90 (*l*), provides a penalty not exceeding 40s. recoverable summarily from any person who affixes or causes to be affixed any bill, notice or paper against, or defaces or disfigures any street post, lamp post, pump, or building vested in any metropolitan borough council, or who removes, defaces or injures any notice board placed or set up by such council, or who pulls down or defaces any notice set up or affixed by order of any such council.

The Metropolitan Police Act, 1839, sect. 54 (10) (*m*), prohibits, except by the consent of the owner or occupier, the affixing of any posting bill or other paper against or upon any building, wall, fence or pale, or the writing upon, soiling, defacing or marking any such building, etc. with chalk or paint or the wilful breaking, defacing or damaging of any such building, wall, fence or pale.

The London Council (General Powers) Act, 1890, sect. 14, and Sched. B. (*n*), enables the L.C.C. to make general bye-laws for the control of public parks, gardens and open spaces, and (*inter alia*) to prohibit the defacing or disfiguring of any monuments, posts, notice boards, houses, buildings, sheds, etc., by posting or affixing in any way any bill, placard or notice thereon. [120]

(*i*) *Rockleys, Ltd. v. Pritchard* (1909), 74 J. P. 11; 26 Digest 567, 2602.

(*k*) *Stockport Corpn. v. Rollinson* (1910), 74 J. P. 236; 26 Digest 567, 2603; but cf. *Barnett v. Covell* (1903), 68 J. P. 93; 26 Digest 567, 2601.

(*l*) 11 Statutes 989.

(*m*) 19 Statutes 121.

(*n*) 11 Statutes 1018, 1022.

BILLIARDS

				PAGE					PAGE
LICENSING	-	-	-	-	59	RIGHT OF ENTRY BY CONSTABLE	-	-	60
OFFENCES	AGAINST	TENOR	OF						
LICENCE	-	-	-	-	60	LONDON	-	-	60

The law relating to billiard licences is contained, in the main, in the Gaming Act, 1845 (*a*). [121]

Licensing.—A billiard-table licence is not required for any fully licensed public-house, but, subject to this exception, every house, room or place kept for public billiard playing, or where a public billiard table is kept, or bagatelle board, or instruments used in any game of the like kind, at which persons are admitted to play, requires a billiard licence. These licences are granted and renewed by the justices at their annual licensing meeting. Transfers of licences are granted at the special sessions for transferring licences for ale-houses (sect. 10). There is no appeal against the refusal of the justices to grant a licence (*b*).

(*a*) 8 Statutes 1146 *et seq.*

(*b*) *R. v. Devonshire J.J.*, (1857), 21 J. P. Jo. 773; 42 Digest 924, 190.

Licences must be in the form given in the Third Schedule to the Gaming Act. They are granted for the year from April 5, and must be renewed annually (sect. 10) (c).

Applicants for a licence or the transfer of a licence must give the same notices as are required in the case of applications for a licence for the sale of intoxicating liquor, or as near thereto as circumstances admit (d). No notice is required in the case of applications for the renewal of a licence.

Any person keeping a public billiard table, or bagatelle board or instruments used in any game of the like kind, for public use, without being duly licensed, or not holding a publican's licence for the premises where the table is kept, or not having the words "licensed for billiards" legibly printed in some conspicuous place near the door and on the outside of the house specified in the licence, is liable to a penalty, on conviction before two justices, of £10 for every day on which the billiard table, bagatelle board or instrument has been used, or to imprisonment, with or without hard labour for one calendar month (Gaming Act, sect. 11) (e). [122]

Offences against Tenor of Licence.—Offences against the "tenor" of a licence are punishable by a fine of £10 for the first offence, and £20 for any subsequent offence (d). An offence is committed against the "tenor" of a licence in the following cases: Where the holder of a billiard licence or a publican's licence wilfully or knowingly permits drunkenness or other disorderly conduct in the house; or knowingly allows the consumption of excisable liquors (f) therein by the persons resorting thereto; or knowingly suffers persons of notoriously bad character to assemble and meet together therein; or opens the house for play or allows play therein after one o'clock and before eight o'clock in the morning; or keeps it open or allows play therein on Sundays, Christmas Day, or Good Friday, or on any day appointed for a public fast or thanksgiving; or refuses to admit a constable (sects. 12, 13 and Third Schedule) (g). [123]

Right of Entry by Constable.—A police constable or officer of police may enter any house, room or place where any public table or board is kept for playing billiards when and so often as he shall think proper. Any holder of a publican's licence or a billiard licence who refuses admission to such constable or officer of police is, on conviction, to be deemed guilty of an offence against the tenor of his licence, and to be punished accordingly (sect. 14) (h).

Appeal lies to quarter sessions against any summary conviction in respect of the above offences under the Gaming Act (sect. 20) (i). [124]

London.—The foregoing law also applies within the Metropolis. [125]

(c) 8 Statutes 1149.

(d) Licensing Act, 1872, s. 75; 9 Statutes 942.

(e) 8 Statutes 1150.

(f) Beer is not an excisable liquor for this purpose. See Inland Revenue Act, 1880, s. 47; 16 Statutes 471.

(g) 8 Statutes 1150, 1154. See also Licensing Act, 1872, s. 75, and Licensing Act, 1921, s. 19; 9 Statutes 942, 1064.

(h) 8 Statutes 1151.

(i) *Ibid.*, 1153.

BILLS, BORROWING BY

	PAGE		PAGE
INTRODUCTORY NOTE	61	INTEREST	62
NATURE AND PURPOSE	61	REPAYMENT	63
MODE OF ISSUE	62	CRITICISMS OF THE USE OF BILLS	63
COSTS OF ISSUE	62	MODEL CLAUSE	64
RECORDS	62	LONDON	65

See also titles : BANKERS AND OTHER OVERDRAFTS ;
BORROWING.

Introductory Note.—The issue of Bills of Exchange (or Money Bills, as they are commonly known) by local authorities generally has not yet received the approval of Parliament. The Metropolitan Board of Works (predecessors of the L.C.C.) in 1877 obtained power to issue “Metropolitan Bills,” which are now authorised as “London County Bills” under later powers obtained by the L.C.C. In addition, the councils of some seventeen county boroughs (including Birmingham, Liverpool and Manchester), two joint boards and one port sanitary authority, have obtained powers under local Acts to borrow temporarily by this means, but since 1918 Parliament has consistently refused to grant new or extended powers to issue bills. Every attempt to obtain the power, or to extend it where it is already enjoyed, has been resolutely opposed by the Treasury.

A bill is usually available only as a means of raising capital moneys for authorised purposes, and it follows that before making an issue of bills the local authority must hold unexercised borrowing powers to cover the proceeds of the issue.

Power to “discount Promissory Notes” is in every respect equivalent to power to issue bills and is covered by this article. Two Scottish cities have obtained power in this form for the temporary financing of revenue expenditure. [126]

Nature and Purpose.—Money Bills have the same legal significance as commercial Bills of Exchange or Promissory Notes, but in their form and mode of issue they bear a closer resemblance to the Treasury Bills by means of which the short-term borrowings of the National Exchequer are financed. They have a minimum currency of three months, and a maximum currency of twelve months, and are generally issued for sums of £500, £1,000 or multiples of £1,000. Each bill is issued under the seal of the local authority and entitles the named purchaser or a subsequent transferee to payment of the nominal amount of the bill at the maturity date, out of the revenues of the local authority, all of which are charged as security for repayment. The issue of bearer bills is not as a rule permitted.

The raising of money by the issue of bills is a most convenient way of tiding over a period that is unsuitable for the issue of a long term loan. Moreover, it is not always possible to foresee the precise amount

of expenditure which a given capital scheme will involve, nor the exact length of the period required for the completion of the work. In such cases the bill is found to be a most economical instrument for raising short-term funds. As an alternative to the usual practice of obtaining temporary loan accommodation from bankers, possession of the power to issue bills places a local authority in a much freer position both in regard to their bankers and as to the time of raising a permanent loan. Considerable savings in interest charges may be effected by the use of bills, since it is clearly cheaper in the long run to borrow on a short-term security at a high rate (to cover a period of high rates generally) if a subsequent funding can be carried out at a lower rate of interest. [127]

Mode of Issue.—Money Bills are not issued at a fixed price. Tenders are invited by press advertisements for bills of a stated amount and period; the tenders quote the price per cent. at which the tenderers are prepared to purchase the bills, and allotments are made to the highest tenderers. Competition tends to ensure that the highest possible tenders (*i.e.* lowest possible rates of discount) are obtained. Usually the issue is negotiated through the Bank of England or one of the large joint stock banks, but in certain circumstances it may be convenient to make a private issue by direct sale to a discount house, with consequent savings in the costs of issue.

The Money Bill has the advantage that it attracts as an investment both the banks and the investing public. To the banks, it is a highly liquid asset maturing at a fixed and early date, while it represents an attractive short-term investment for large business undertakings. Bills are, however, essentially a money market security, and are not dealt in on the Stock Exchange. [128]

Costs of Issue.—The principal item of cost in connection with the issue of bills is the stamp duty at the rate of 1s. per cent. which must be impressed on each bill, under the Stamp Act, 1891 (*a*), as amended by the Finance Act, 1897, sect. 8 (*b*). The commission for negotiating the issue paid to the agent bank is of course a matter of arrangement, but is generally at the rate of 1s. per cent. per annum on the nominal amount of the issue. [129]

Records.—A register of bills issued and renewed must be kept by the treasurer or other person appointed by the local authority, recording the amount of each bill, the principal money raised by such bill, the statutory borrowing power exercised by the issue, and the dates of issue and repayment. The register is open to inspection by any creditor of the local authority.

Within forty-two days after the close of any financial year in which any bills have been issued, paid off, or are outstanding, the treasurer must submit to the M. of H. a return of particulars of the bill transactions of the year. These requirements are imposed by the local Acts allowing the issue of bills. [130]

Interest.—The amount actually realised by the issue of bills (*i.e.* the accepted tender price) is the principal sum borrowed, and the difference between the amount received and the nominal amount payable at maturity represents interest on the loan. The rate of dis-

(a) 16 Statutes 618 *et seq.*

(b) *Ibid.*, 696.

count is usually expressed as a percentage of the nominal amount, but the true rate of interest payable is calculated on the basis of the proceeds of the issue, *e.g.* an issue of twelve months' bills at a rate of discount of £3 per cent. is equivalent in terms of true interest to a rate of £3 1s. 1·27*d.* per cent. per annum. The amount of discount or interest must be provided out of revenue by the fund or rate to which the proceeds of the issue are allocated. [131]

Repayment.—At the expiration of their currency, bills may be either renewed or repaid, *e.g.* out of the proceeds of an issue of stock. But as bills may be issued only in respect of authorised borrowing powers, it follows that, in accordance with the appropriate borrowing power or loan sanction under which the proceeds are allocated, provision must be made during the currency of the bills for the payment to sinking fund of the due proportion of the contribution towards repayment, as if the money had been raised by the issue of stock or mortgages. Such provision is a charge on the fund or rate to which the proceeds of the issue have been allocated, and it is payable notwithstanding that the capital purpose may be one for which a period of thirty years is allowed for redemption, although the bills themselves, if not renewed, must be replaced by a more permanent form of borrowing at the end of (say) twelve months. Generally, bills are not renewed at maturity; they are intended to provide emergency capital, and unless the market conditions have not improved since their issue, they are as a rule paid off out of the proceeds of stock issued.

If, at the approach of the maturity date, market conditions are still unfavourable to a stock issue or other means of funding the amount of bills outstanding, renewal may be effected by making a fresh issue of bills and using the proceeds to pay off the maturing issue. On repayment at the maturity date (without days of grace), the bills are surrendered and cancelled. [132]

Criticisms of the Use of Bills.—The strong opposition of the Treasury to any extension of local authorities' powers to issue bills is based chiefly on the view that they compete with Treasury bills and so tend to increase the cost of Government borrowing. The Treasury also foresee a danger of bills being used as an instrument for permanent financing; in their opinion the capital expenditure of local authorities should be financed by the issue of a security of at least five years' currency. They would, it appears, confine the power to issue bills to those authorities who need a working balance in order to meet current revenue expenditure, on the analogy of the pre-war Treasury Bills, which were used for bridging over a seasonal shortage of current income in relation to current expenditure.

The practice of certain local authorities in continuously renewing maturing bills and thus creating a sort of permanent unfunded debt offends against the principle underlying the purpose of the Money Bill, *i.e.* to provide capital moneys in an emergency pending the arrival of a favourable time for funding the debt by an issue of stock. It is always possible that difficulty might be experienced in renewing bills at a time of stress and restriction in the money market.

It is interesting to note that the question of borrowing temporarily by means of discounting promissory notes was examined by the Committee on Local Expenditure (Scotland) (c). The committee considered

this a very valuable privilege which should be extended to all counties, cities and large burghs forthwith, subject to the same conditions and regulations which govern the present sanction to the two cities. They make it perfectly clear that their recommendation is not made to encourage borrowing, but to allow such borrowing as is necessary to be effected at the cheapest possible rate. [133]

Model Clause.—The following is the model clause found in local Acts authorising the issue of bills (*d*) :

“ Instead of raising for any purposes, by the creation and issue of stock or of mortgages, money which they are authorised to raise by either of these methods (whether under this Act or any other Act of Parliament or otherwise howsoever) the corp. may, if they see fit, raise for those purposes such money by means of bills subject to and in accordance with the following provisions :

- (1) bills issued by the corp. shall be called Birmingham Corp. bills ;
- (2) a Birmingham corp. bill shall be a bill in the form prescribed by regulations made in pursuance of this Act for the payment of the sum named therein in the manner and at the date therein mentioned so that the date be not less than three nor more than twelve months from the date of the bill ;
- (3) such bills may be offered for purchase by tender in such manner and on such conditions and after public advertisement in such manner as the corp. determine ;
- (4) the bills shall be issued under the authority of a warrant sealed by the corp. ;
- (5) each bill shall be for the amount directed by the corp., not being less than five hundred pounds ;
- (6) each bill shall be under the seal of the corp. ;
- (7) a register of the bills issued and renewed by the corp. shall be kept by the treasurer or such other person as may be appointed by the corp. and such register shall show the amount of each bill, the principal money raised by such bill, the statutory borrowing power in respect of which the bill is issued, the date of issue, the date when the same falls due, and the date of payment thereof. Such register shall at all reasonable times be open to inspection without payment of any fee by any creditor of the corp. ;
- (8) the corp. shall not issue bills payable to bearer ;
- (9) the corp. shall before issuing any bill under this Act, from time to time make regulations with respect to bills subject to and in accordance with this Act, and shall furnish to the M. of H. a copy of any regulations so made. Such regulations shall provide :—
 - (a) for regulating the preparation, form, mode of issue, mode of payment and cancellation of bills ;
 - (b) for regulating the issue of a new bill in lieu of one defaced, lost or destroyed ;
 - (c) for preventing, by the use of counterfoils or of a special description of paper or otherwise, fraud in relation to bills ;
 - (d) for the proper discharge to be given upon the payment of a bill ;

(*d*) Extract from the Birmingham Corp. Act, 1903 (3 Edw. 7, c. xcii.), s. 143. See Chapter VIII. and Appendix III. “ Loans of Local Authorities (England and Wales)” (2nd Ed.) by J. R. Johnson.

- (10) the corp'n. may enter into such arrangements with any bank for carrying into effect the provisions of this Act with respect to the issue of bills and to the payment of the principal sum named therein, and to all matters relating thereto, and for the proper remuneration of such bank with reference thereto as they may think proper. Such remuneration shall be apportioned between the several funds or rates to which the principal moneys raised by the bills are chargeable ;
- (11) the amount of money received by the corp'n. in respect of a bill shall be deemed to be principal money raised by means of such bill ; and the difference between the amount payable in respect of a bill and the amount received in respect thereof shall be deemed to be interest on the principal money so raised ;
- (12) the corp'n. shall provide from the same source and pay at the appropriate time into a sinking fund or sinking funds the same sums for repayment of the principal money so raised as they would have done if mortgages of the same amount had been issued and such fund or funds shall be dealt with in the same manner as if the same were a mortgage sinking fund, and the corp'n. shall pay the interest on the principal money out of the fund or rate to which the principal money so raised is charged ;
- (13) the aggregate amount payable on bills current at any one time shall not exceed the sum of five hundred thousand pounds except by the amount payable on bills issued shortly before any other bills fall due in order to pay off those bills ;
- (14) the corp'n. may subject to the provisions of the preceding sub-section renew bills at maturity ;
- (15) money raised by the issue of bills shall be employed by the corp'n. for the purpose of the several statutory borrowing powers in respect of which the bills are respectively issued ;
- (16) for the repayment of the principal money raised by bills the corp'n. may raise money by the creation of stock or issue of mortgages or further bills ; but save as aforesaid the powers given to the corp'n. to raise moneys by the creation of stock or mortgages shall be suspended to the extent to which moneys have been raised by the issue of bills ;
- (17) a Birmingham corp'n. bill shall entitle the holder to payment at maturity of the sum expressed in such bill to be payable, and shall be charged on all the revenues of the corp'n. ;
- (18) the treasurer shall within forty-two days after March 31 in any year during which any bills have been issued, paid off, or outstanding under this section, transmit to the M. of H. a return in such form as the Minister may prescribe and containing all such particulars as he may require in regard to the issue of and payment of bills by the corp'n." [134]

London.—As stated above the L.C.C. have statutory authority to issue bills known as "London County Bills," the aggregate of which outstanding at any one time must not exceed £2,000,000.

The L.C.C. (Finance Consolidation) Act, 1912 (*e*), repealed certain provisions of the L.C.C. (Money) Acts, which authorised the issue of "London County Bills." Sect. 35 of the Act of 1912 provides that such

Bills may be issued in a form to be prescribed by regulations made by the Council and are to be offered, after public advertisement, for purchase by tender in such manner and on such conditions as the Council may determine. The aggregate amount payable on bills current at any one time is not to exceed the sum of £2,000,000. It is stated on p. 30 of Part I. of the annual report of the Council for 1931 (published in 1933) that no such bills were outstanding or issued during the year 1931. [135]

BILLS, PARLIAMENTARY AND PRIVATE

	PAGE		PAGE
INTRODUCTION - - - -	66	3. Not later than December 4 :	
PROMOTION - - - -	68	Deposit of Bills with Govern-	
A. REQUIREMENTS OF L.G.A.,		ment Departments and other	
1933, AS TO PROMOTION -	68	Authorities : Deposit of	
1. Procedure on Promotion -	68	Estimates - - - -	76
2. The Resolution - - -	68	4. Not later than December 5 :	
3. Approval by Local Govern-		Notices to owners, etc., in	
ment Electors - - - -	69	case of certain Bills - -	78
4. How Wishes of Electors Ascer-		5. Not later than December 11 :	
tained - - - -	69	Notices to Owners, etc., in	
5. Meeting of Local Government		case of certain other Bills :	
Electors - - - -	69	Newspaper and <i>Gazette</i>	
6. When Poll may be Demanded	70	Notices : Statement as to	
7. How Poll is Taken - -	70	Working-class Houses -	79
8. Penalties for Offences in Con-		OPPOSITION - - - -	83
nection with Poll - - -	70	A. REQUIREMENTS OF L.G.A., 1933,	
9. Equality of Votes at Meeting		AS TO OPPOSITION - - -	83
or Poll - - - -	71	B. STANDING ORDERS AS TO OP-	
10. Duty of Council if Meeting or		POSITION - - - -	84
Poll against Resolution -	71	Petition against Bill - -	84
11. Failure to Comply with Statu-		Deposit of Petitions - -	84
tory Requirements - - -	71	Late Petitions - - - -	84
12. Special Powers of Local		Petitions against Alterations -	84
Authorities - - - -	71	Form of Petition - - - -	84
B. STANDING ORDERS AS TO PRO-		Locus Standi - - - -	84
MOTION - - - -	71	Specific Locus Standi in Certain	
Classes of Private Bills - -	72	Cases - - - -	85
Procedure on Promotion - -	72	Cases left to Discretion of House	
1. Not later than November 20 :		Authorities - - - -	85
Deposit of Plans, etc. -	72	Expenses of Local Authority in	
2. Not later than November 27 :		Promotion or Opposition -	87
Deposit of Bills with Par-		LONDON - - - -	87
liament - - - -	76		

See also titles :

COSTS ;
PARLIAMENTARY AGENTS ;
PRIVATE ACTS ;

PROVISIONAL ORDERS ;
SUNDAY ENTERTAINMENTS ;
TOWN MEETINGS.

INTRODUCTION

Much parliamentary time each session is devoted to the consideration of private or local bills. Such bills are measures which affect particular persons or localities. Public general Acts usually create or amend a code applying to the whole of England and Wales or Scotland, or the whole of the United Kingdom. Problems, however, arise locally, which require powers beyond those contained in the general law, and

such special powers, on proof of the merits of the case, can be obtained by means of a private bill.

Private bills usually extend either to London only or some particular borough or other local area, and contain provisions in the interests of a local authority, company or individual. But as pointed out in May's Parliamentary Practice (a), considerable difficulty has often arisen in deciding whether a particular bill should be introduced as a public bill or as a private bill. If the bill should propose radical alterations in the administration of justice or the government of the police, or should bring forward important alterations of the general law which would affect a large population, it should properly be introduced as a public bill. Thus, the Metropolitan Police Acts, 1829 to 1931 (b), are public general Acts, and the bills for the Metropolis Management Act, 1855, and amending Acts (c), the P.H. (London) Act, 1891 (d), and the London Government Act, 1899 (e), were all introduced as public bills. On the other hand, the bills for the London Building Acts, 1894 and 1930 (f), were introduced as private bills.

The introduction of a bill as a private bill allows persons whose interests are threatened by it to appear by counsel before a parliamentary committee, while no such opportunity is afforded by the procedure on a public bill. To meet this difficulty, the promotion of "hybrid bills" has been devised, by which is meant the introduction of the bill as a public bill, and its subsequent committal to a private bill committee, by whom opponents will be heard by counsel, as if it were a private bill. The bill for the London Passenger Transport Act, 1933, was dealt with as a hybrid bill, in addition to a number of measures authorising the Government to acquire particular sites for the erection of buildings. [136]

Each House of Parliament has laid down Standing Orders which control and regulate the proceedings before the House. The person or body wishing to promote or oppose a private bill in Parliament must comply with these Standing Orders. But whether a statutory body may avail itself of the facility of promoting or opposing a bill depends primarily upon the terms of the enactment governing its constitution and functions and the funds under its control. If, however, the bill is passed and becomes an Act of Parliament, it will contain a clause authorising the costs of the promotion to be paid by the promoters, and bills have occasionally been promoted by local authorities and other bodies, having, in strictness, no power to promote a bill. If the bill should fail to pass, the costs of the promotion are liable to attack. [137]

It should be mentioned that, apart from statute, a local authority whose existence, or whose powers, privileges or property are seriously threatened by a private bill, have an inherent power, as trustees for the ratepayers, to oppose the bill before Parliament (g). This right is recognised in sect. 258 (1) of the L.G.A., 1933, which provides that nothing in Part XIII. of the Act (which relates to the promotion of and opposition to bills) shall take away or diminish any right of a local authority to

(a) 13th Ed., pp. 657—670.

(b) 12 Statutes, title "Police."

(c) 11 Statutes 889 *et seq.*

(d) *Ibid.*, 1025.

(e) *Ibid.*, 1225.

(f) *Ibid.*, 1123 ; 23 Statutes 213.

(g) *A.-G. v. Brecon Corpn.* (1878), 10 Ch. D. 204 ; 33 Digest 82, 530.

oppose a local and personal bill, which apart from the Act would be exercisable by the local authority.

By Part XIII. of the L.G.A., 1933 (*h*), which (outside London) (*i*) replaces the Borough Funds Acts, 1872 and 1903 (*j*), and other enactments as from June 1, 1934, Parliament has expressly authorised certain local authorities to promote or oppose a private bill in Parliament and defray the expenses thereby incurred.

Sect. 253 of the L.G.A., 1933 (*jj*), provides that the council of a county, borough or district (but not a parish council) may promote or oppose a private bill when satisfied it is expedient to do so, and may defray the expenses incurred in relation thereto. This power, however, does not extend to authorise the promotion of a bill to establish gas or water works to compete with an existing statutory gas or water company. And although not prohibited by statute it may be taken that Parliament will not look favourably upon proposals to compete with an efficient non-statutory undertaking of this kind. [138]

Although Parliament has invested local authorities of the class mentioned with a power to promote or oppose a private bill, it has made the exercise of such powers conditional upon the observance of what may be termed the preliminary procedure prescribed in the L.G.A., 1933, Part XIII. and Sched. IX. The precise steps to be taken vary according to whether the local authority wishes to promote or oppose the bill, and are given below.

In addition a local authority must comply with the Standing Orders of Parliament if it wishes to be heard by Parliament in relation to the promotion of or opposition to a bill.

It is proposed to deal in this article with the various steps which must be taken by a local authority under the L.G.A., 1933, and the present Standing Orders of Parliament. [139]

PROMOTION

A. REQUIREMENTS OF L.G.A., 1933, AS TO PROMOTION

1. Procedure on Promotion.—In the case of the promotion of a bill, sects. 254 and 255 of the L.G.A., 1933, require that the promotion shall be approved :

By two resolutions passed at meetings of the authority, one of which must be held after the expiration of 14 days after the deposit of the bill in Parliament (*k*).

By the local government electors of the area of the authority. This provision only applies to the council of a borough or urban district. [140]

2. The Resolution.—Under sect. 254 of the Act a resolution approving the promotion must be passed by a majority of the whole number of the members of the authority at a meeting called for the purpose.

Ten clear days' notice of the meeting (in addition to the ordinary notice) and its purpose must be given in one or more newspapers circulating in the area of the authority.

Sect. 254 also requires the publication of the resolution in one or

(*h*) See 26 Statutes 443.

(*i*) As to London, see p. 87, *post*.

(*j*) 10 Statutes 559, 836.

(*jj*) 26 Statutes 443.

(*k*) Under existing Standing Orders the bill must be deposited not later than November 27 (see House of Commons Standing Order No. 38, and House of Lords Standing Order No. 38).

more newspapers circulating in the area of the authority, and the approval of the resolution by the Minister of Health. An authority is precluded from proceeding further with the promotion if the Minister disapproves the resolution.

The Minister must allow seven days to elapse after publication of the resolution before giving his approval. During this period any local government elector for the area may object in writing to the Minister.

The promotion must also be approved by the authority by a majority of the whole number of their members at a further meeting held as soon as may be after the expiration of fourteen days after the bill has been deposited in Parliament.

Ten clear days' notice of this meeting and its purpose must also be given in one or more local newspapers circulating in the authority's area. [141]

3. Approval by Local Government Electors.—Under the provisions of sect. 255 of the Act the council of a borough or urban district must obtain the approval of the local government electors to the promotion unless it be a bill promoted by a borough, the sole purpose of which is to create the borough a county borough (*l*) or extend the area of a county borough. [142]

4. How Wishes of Electors Ascertained.—Sched. IX. to the Act prescribes the procedure to be adopted by the council of a borough or urban district in order to ascertain the wishes of the local government electors with reference to the proposed promotion of a bill. The steps that must be taken by the authority are briefly as follows :

Notice and its Contents (Sched. IX., para. 1).—Notice by the council must be given by placard and by advertisement in at least one local newspaper in two successive weeks. The first notice must be given within seven days after the bill has been deposited in either House. The notice must state the title and objects of the bill, the place within the area where, for a period of fourteen days, copies of the bill may be purchased or extracts taken, and that a public meeting of local government electors, for the purpose of considering the question of the promotion of the bill, will be held on a named day not being less than fourteen days nor more than twenty-eight days after the first advertisement of the notice. [143]

5. Meeting of Local Government Electors (Sched. IX., paras. 3, 4).—The meeting of local government electors must be held in accordance with the notice. The mayor or chairman or other nominee of the council presides at the meeting, but if none of these persons is present within ten minutes after the time appointed for the meeting, the meeting must choose an elector present to preside.

The person presiding may, with the consent of the majority of electors present, adjourn the meeting for a period not exceeding seven days (para. 4). [144]

The Resolution (Sched. IX., paras. 6, 7).—A resolution in favour of the promotion must be put and explained to the meeting by the person presiding. There may be one resolution covering the whole bill or

(*l*) A bill for this purpose may not be promoted unless the population is 75,000 or upwards (s. 139 ; 26 Statutes 379).

separate resolutions in respect of any provision of the bill provided the question of the promotion of the whole bill is dealt with. The meeting may require the person presiding to deal with any provision of the bill by a separate resolution.

Unless a poll is demanded as provided by para. 8 of the Schedule, the decision of the meeting on the resolution is final (para. 7). [145]

6. When Poll may be Demanded (Sched. IX., paras. 8, 9, 10).—A poll may be demanded with respect to any resolution by not less than one hundred electors or one-twentieth of the electors, whichever is less, or if the decision of the meeting is against the resolution, by the council.

A requisition for a poll by the electors must be in writing signed by the persons making it, and must be delivered to the mayor or chairman of the council within seven days after the date of the meeting or its adjournment.

A requisition for a poll by the council must be authorised by resolution passed within twenty-one days after the date of the meeting of electors, and a copy of the resolution must be delivered to the mayor or chairman of the council. [146]

7. How Poll is Taken (Sched. IX., paras. 11—17).—The mayor or chairman of the council must take a poll on the resolution to which any requisition relates, unless a poll is rendered unnecessary by the withdrawal of the requisition or the withdrawal by the council of the bill or the provision thereof with respect to which a poll has been demanded.

Polls with respect to any number of resolutions may be taken at the same time and by means of the same voting paper.

The mayor or chairman of the council must cause the votes given at the poll to be counted and declare the result. The decision of the mayor or chairman on any question arising on any voting paper is final.

In the event of the mayor or chairman of the council being unable or unwilling to act with respect to a poll, the council must appoint some other person to act.

Subject to the provisions above mentioned the poll must be taken in accordance with regulations made by the Minister of Health, and the Minister may prescribe forms for requisitions, voting papers, notices and other documents under Sched. IX. (*m*). The prescribed forms or forms to the like effect must be used. Regulations made by the Minister under the Schedule have to be laid before each House of Parliament as soon as may be after they are made. [147]

8. Penalties for Offences in Connection with Poll.—Under para. 18 of the Ninth Schedule to the Act provision is made for offences in connection with a poll taken under the Schedule. This paragraph is in the following terms :

“ Any person who at, or for the purposes of, a poll under the provisions of this Schedule—

- (a) fraudulently signs or forges any signature to a requisition of electors ; or
- (b) applies for a voting paper in the name of some other person, whether that name be that of a person living or dead, or of a fictitious person ; or

(*m*) No regulations under the Act have yet been made, but the corresponding regulations under the Borough Funds Act, 1903, which s. 307 of the L.G.A., 1933, saves, will be found in the Borough Funds Acts (Polls) Order, 1903 (S.R. & O., 1903, No. 933).

- (c) having voted once, applies for a second voting paper in his own name ; or
 - (d) forges or counterfeits, or fraudulently defaces or fraudulently destroys, any voting paper ; or
 - (e) without due authority supplies a voting paper to any person ; or
 - (f) fraudulently puts into any box or other receptacle any paper other than a voting paper supplied to him for the purpose ; or
 - (g) fraudulently takes out of the polling station any voting paper ; or
 - (h) without due authority destroys, takes, opens or otherwise interferes with any box or other receptacle for voting papers or any voting papers then in use ; or
 - (i) causes any disturbance or disorder in or near any polling station ;
- shall be liable, on summary conviction, to a fine not exceeding twenty pounds."

If any person attempts to commit an offence against para. 18 of this Schedule he is liable, on summary conviction, to the same punishment as if he had committed such an offence. [148]

9. Equality of Votes at Meeting or Poll.—In the case of an equality of votes at a meeting of electors or a poll taken under the Schedule, the decision is to be taken as against the resolution voted upon. [149]

10. Duty of Council if Meeting or Poll against Resolution.—Under sect. 255 (2) of the Act, if the result of a poll taken under the Schedule, or the decision of the meeting when a poll is not duly demanded under the provisions of the Schedule, is against the promotion of a bill or any provision of a bill, the council must take all necessary steps to withdraw the bill or the provision against which the poll has resulted, or the decision of the meeting has been given. [150]

11. Failure to Comply with Statutory Requirements.—Under sect. 255 (3) (n) of the Act, failure to comply with the requirements of Sched. IX. to the Act as to notices, time within which anything is to be done, or the procedure at a meeting, or taking of a poll, does not render the promotion of the bill unauthorised provided the requirements of the Schedule have been substantially complied with and the failure has not affected the result of the proceedings. [151]

12. Special Powers of Local Authorities.—A few local authorities possess powers under local Acts to promote a private bill for specified purposes. These special powers are not affected by the general powers given to local authorities by Part XIII. of the L.G.A., 1933. Local authorities possessing such special powers may by sect. 258 (2) of the L.G.A., 1933, if they wish, adopt with respect to the promotion the procedure provided by Part XIII. of the general Act in lieu of that provided by the special Act (o). [152]

B. STANDING ORDERS AS TO PROMOTION (oo)

A local authority, company, body or person wishing to promote or oppose a private bill before Parliament must comply with the Standing Orders prescribed by each House of Parliament as non-compliance will involve the promoters in serious difficulties.

A local authority, therefore, has to comply with three sets of require-

(n) 26 Statutes 443.

(o) *Ibid.*, 445.

(oo) The Standing Orders referred to in this Part are those in force in 1933.

ments, namely the procedure prescribed by Part XIII. of the L.G.A., 1933, and that laid down by each set of Standing Orders.

It is proposed only to refer to such Standing Orders as affect local authorities, and to deal first with the orders prescribing the procedure in the case of promotions, and then with those which have to be observed by opponents to any proposals. [153]

Classes of Private Bills (p).—Under the Standing Orders private bills are of two classes :

Bills of the first class comprise such matters as burial grounds, charters and corporations, church or chapel building, city or town paving, lighting or watching, etc., electricity supply, gas works, enlarging or extending powers of local authorities, markets, pilotage, police and trolley vehicles.

Bills of the second class deal with the making, extending, varying, enlarging or maintaining any aqueduct, archway, bridge, canal, cut, dock, drainage, embankments, ferry (where work is to be executed), harbour, motor road, navigation, pier, port, public carriage-road, railway, reservoir, sewer, street, subway, tramway, tramroad (that is a tramway not laid along a street or road), tunnel or waterworks.

It will be seen, therefore, that the main distinction between the two classes is that the second class includes bills seeking powers in relation to substantial works. [154]

Procedure on Promotion.—The preliminary steps which must be taken by promoters under the Standing Orders are, in order of date, as follows :

1. **Not Later than November 20. Deposit of Plans, etc.**—In the case of bills of the second class and certain bills of the first class, the following deposits of plans and sections, with a book of reference thereto, and maps must be made not later than November 20.

The Standing Orders of both Houses require the plans, sections and book of reference to be prepared in accordance with the directions contained therein (q).

Deposits must not be made on Sunday, Christmas Day, Good Friday or Easter Monday, or before 8 a.m. or after 8 p.m. (r).

(1) (a) *With Parliament—House of Lords ; Clerk of the Parliaments.*—One copy of plans, sections and book of reference (s).

One ordnance map (one inch to mile) in the case of railway bills, showing the line of railway (t).

One ordnance map (not less than six inches to mile) in the case of tramway or trolley vehicle bills, showing proposed system, together with diagram prepared in accordance with the model of the M. of T. (a).

One ordnance map (six inches to mile) showing the proposed works in bills in which it is proposed to take or impound water (b).

One ordnance map (one inch to mile) showing the catchment area, in cases where the proposed source of supply is a river, stream or lake (b).

One ordnance map (one inch to mile) showing the existing and proposed water limits when it is proposed to extend the limits of supply (b).

(p) See Standing Orders (H. of C.), 1 ; (H. of L.), 1.

(q) Standing Orders (H. of L.), 48—65 ; (H. of C.), 50—66.

(r) Standing Orders (H. of L.), 24 ; (H. of C.), 26.

(s) Standing Orders (H. of L.), 25.

(t) Standing Orders (H. of L.), 26.

(a) Standing Orders (H. of L.), 27 ; (H. of C.), 29.

(b) Standing Orders (H. of L.), 29.

(b) *House of Commons; Committee and Private Bill Office*.—One copy of plans, sections and book of reference (c).

One ordnance map (one inch to mile) in railway bills, showing the proposed line of railway.

One ordnance map (not less than six inches to mile) in tramway and trolley vehicle bills, showing the proposed system, together with a diagram prepared in accordance with the model of the M. of T. (d).

In bills of the second class in which any proposed work has been altered in the First House (other than alterations made on petition for additional provisions), a plan and section of the alteration in other respects similar to the original plan and section, with a book of reference thereto must be deposited with the Clerk of the Parliaments or the Committee and Private Bill Office as the case may be, not later than two weeks previous to the introduction of the bill into the Second House (e). [155]

(2) *With M. of H. (f)*.—One ordnance map (six inches to mile) showing position of proposed work in water bills seeking to take, collect or impound water.

One ordnance map (not less than one inch to mile) showing the catchment area where the proposed source of supply is a river, stream or lake.

One ordnance map (not less than one inch to mile) showing the existing and proposed limits of supply when it is proposed to extend the existing limits.

One ordnance map (not less than three inches to mile) showing the existing and proposed boundaries in bills in which it is proposed to alter or extend the municipal boundaries of any city, borough or urban district (g). [156]

(3) *With M. of T.*—One ordnance map (not less than one inch to mile) showing proposed area of supply in electricity bills (h).

One ordnance map (not less than six inches to mile) showing the proposed system in tramway and trolley vehicle bills, also a diagram prepared in accordance with the specimen diagram at the Ministry (i).

One copy of plans, sections and book of reference in the case of railway, tramway and canal bills and bills relating to waterways, inland navigation, roads, bridges, ferries, harbours, docks and piers (k).

One ordnance map showing the line of railway in railway bills (k). [157]

(4) *With H.O.*—One copy of so much of the plans, sections and book of reference as relates to any churchyard, burial ground or cemetery proposed to be taken or interfered with, or as relates to any common or commonable land proposed to be taken (l). [158]

(5) *With Board of Trade and Board of Admiralty*.—One copy of the plans and sections shewing the detail prescribed in the Standing Orders must be deposited with the Marine Department of the Board of Trade

(c) Standing Orders (H. of C.), 28.

(d) Standing Orders (H. of C.), 29.

(e) Standing Orders (H. of L.), 70; (H. of C.), 70.

(f) Standing Orders (H. of L.), 29.

(g) Standing Orders (H. of L.), 25; (H. of C.), 27.

(h) Standing Orders (H. of L.), 28; (H. of C.), 30.

(i) Standing Orders (H. of L.), 27; (H. of C.), 29.

(k) Standing Orders (H. of L.), 33; (H. of C.), 34.

(l) Standing Orders (H. of L.), 36; (H. of C.), 37.

and the civil engineer-in-chief at the Admiralty in all cases where tidal lands within ordinary spring tides are proposed to be acquired or affected (*m*). [159]

(6) *With M. of A. & F.*—One copy of so much of the plans and sections as relates to the proposed making, extending or enlarging of any dam, weir or obstruction to the passage of fish in a river or estuary or any sewer discharging therein (*n*).

One ordnance map (not less than three inches to mile) showing the existing and proposed boundaries, in bills in which it is proposed to alter or extend the municipal boundary of any city, borough or urban district (*o*).

One copy of so much of the plans, sections and book of reference as relates to any common or commonable land proposed to be taken (*p*). [160]

(7) *With Fishery Boards.*—One copy of so much of the plans and sections as relates to the proposed making, extending or enlarging any dam, weir or obstruction to the passage of fish in any river or estuary must be deposited with any Fishery Board having jurisdiction over the river or estuary (*q*). [161]

(8) *With River Conservators.*—One copy of so much of the plans and sections as relates to any work proposed to be erected on the banks, foreshore or bed of any river, together with an ordnance map showing the position of the works must be deposited with any Board of Conservators having jurisdiction over the river.

The plans must show the detail specified in the Standing Order and must be accompanied by an ordnance map (*r*). [162]

(9) *With Commissioner of Police.*—One copy of so much of the plans and sections as relates to works the construction of which is likely to affect street traffic or its regulation in the Metropolitan police area (*s*). [163]

(10) *With Local Authorities.*—

(a) *L.C.C.*—One copy of so much of the plans, sections and book of reference as relates to any work proposed to be made or to be taken or used compulsorily in the administrative county of London (*t*).

(b) *County Councils and County Borough Councils.*—Two copies of plans and sections together with a book of reference thereto must be deposited with county and county borough councils in or through whose area the works are proposed to be made, maintained, varied, extended or enlarged, or in which lands or houses are to be taken or used compulsorily or subjected to a charge; and in railway bills, in addition to the plans, sections and book of reference an ordnance map of one inch to the mile, showing the line of railway must also be deposited.

One map (not less than three inches to mile) showing the present and proposed boundaries in the case of bills seeking to alter or extend

(*m*) Standing Orders (H. of L.), 30; (H. of C.), 31.

(*n*) Standing Orders (H. of L.), 31; (H. of C.), 32.

(*o*) Standing Orders (H. of L.), 25; (H. of C.), 27.

(*p*) Standing Orders (H. of L.), 36; (H. of C.), 37.

(*q*) Standing Orders (H. of L.), 31; (H. of C.), 32.

(*r*) Standing Orders (H. of L.), 32; (H. of C.), 33.

(*s*) Standing Orders (H. of L.), 37.

(*t*) Standing Orders (H. of L.), 34; (H. of C.), 35.

the municipal boundaries of any city, borough or urban district must be deposited with the clerk to the council whose area is affected (*u*).

(*c*) *Other Local Authorities*.—Where it is proposed to make, maintain, vary, extend or enlarge any work, or take or use compulsorily any lands or house or impose an improvement charge, a copy of so much of the plans, sections and book of reference as relates to the following areas must be deposited as indicated (*a*) :

The City of London or any metropolitan or non-county borough, with the town clerk of the city or borough.

An urban district not being a borough, or any rural district, with the clerk of the district council.

A parish having a parish council, with the clerk of the parish council, or if there is no clerk with the chairman of the council.

A parish comprised in a rural district and not having a parish council, with the chairman of the parish meeting.

The course to be taken on the receipt of a document is indicated in sect. 280 of the L.G.A., 1933 (*aa*), which supplements the Standing Orders by directing that the clerk or chairman with whom a document is deposited, shall receive and retain it in the manner and for the purposes directed by the Standing Order, and shall make such memorials and endorsements on, and give such acknowledgments and receipts in respect of it as may be so directed. Provision is also made in sect. 280 (2) for the inspection of any such document by any person interested in it, and the taking of copies and extracts, on the payment of a fee of 1s. for the inspection, and of a further fee of 1s. for every hour during which the inspection continues after the first hour.

Sects. 1 and 2 of the Parliamentary Documents Deposit Act, 1837 (*b*), which are repealed by the L.G.A., 1933, except as regards London, contained similar provisions.

Sect. 6 (1) of the L.G. (Clerks) Act, 1931 (*c*), allowed the clerk of a county council to charge a fee on the deposit with him of any document pursuant to the Standing Orders of Parliament, but this provision is also repealed by the L.G.A., 1933, and is not re-enacted (*d*). The Chelmsford Committee thought it anomalous that a fee should be paid for the deposit of documents with a county council, but not with any other local authority, and suggested that councils might well take custody of these documents without fee, so long as they are allowed to make charges for their inspection by the public (*e*).

In bills of the second class in which any proposed work has been altered in the First House (other than alterations made on petition for additional powers), a plan and section of the alteration in other respects similar to the original plan and section, with a book of reference thereto, must be deposited with clerks to county and county borough councils and with the officers of the local authorities mentioned on p. 76, in whose area the alteration is proposed to be made, not later than

(*u*) Standing Orders (H. of L.), 25 ; (H. of C.), 27.

(*a*) Standing Orders (H. of L.), 35 ; (H. of C.), 36.

(*aa*) 26 Statutes 453.

(*b*) 12 Statutes 472.

(*c*) 24 Statutes 245.

(*d*) The Act of 1931 does not extend to London ; see s. 16.

(*e*) See Cmd. 4272, p. 99.

two weeks previous to the introduction of the bill into the Second House (f).

In tramway, trolley vehicle or railway bills under which it is sought to alter or disturb the surface of any street or road, notice thereof must not later than November 20 be posted for fourteen days in the street or road, and in the case of tramway and underground railway bills must state the place or places at which the plans will be deposited (g). [164]

2. Not Later than November 27. Deposit of Bills with Parliament.—Not later than November 27, copies of the bill must be deposited at the offices of Parliament as follows (h) :

House of Lords.—A printed copy of the bill must be deposited with the Clerk of the Parliaments.

House of Commons.—The petition for the bill with a copy of the bill annexed, and copies of the bill for the use of agents must be deposited at the Committee and Private Bill Office.

Copies of the bill for the use of members must also be deposited at the Vote Office. [165]

3. Not later than December 4. Deposit of Bills with Government Departments and other Authorities. Deposit of Estimates.

DEPOSIT OF BILLS.—Printed copies of the bills specified below must be deposited not later than December 4, at the following offices (i) :

With Treasury.—Every bill.

With H.O. (k).—Every bill including bills relating to Northern Ireland.

With M. of H. (k).—Every bill.

With M. of T. (l).—Bills relating to railways, light railways, tramways, canals, waterways, inland navigations, roads, bridges, ferries, harbours, docks, piers, generation or supply of electricity.

With Board of Trade (l). Every bill relating to gas, water power, patents, designs, trade marks, or copyrights, or for incorporating or giving powers to any company.

Every bill affecting foreshore or tidal lands or relating to any dock, harbour, navigation, pier, port or tidal waters.

Every bill relating to the use, inspection or verification of weights and measures.

With Board of Admiralty (l).—Every bill affecting foreshore or tidal lands or relating to any dock, harbour, navigation, pier, port or tidal waters.

With M. of A. & F. (l).—Every bill relating to the making, extending or enlarging of any dam, weir or obstruction to the passage of fish in any river or estuary or abstraction of water from any river.

Every bill relating to the drainage or improvement of land, or affecting any proposed or existing market or market place for the sale of cattle, or any matter within the jurisdiction of the Ministry.

(f) Standing Orders (H. of L.), 70 ; (H. of C.), 70.

(g) Standing Orders (H. of L.), 10 ; (H. of C.), 12.

(h) Standing Orders (H. of L.), 38 ; (H. of C.), 38.

(i) Standing Orders (H. of L.), 39 ; (H. of C.), 39.

(k) Standing Orders (H. of L.), 39 ; (H. of C.), 39.

(l) Standing Orders (H. of L.), 39 ; (H. of C.), 39.

Every bill relating to the alteration of the boundary of any administrative area or the taking of any common or commonable land.

With Fishery Boards (l).—Every bill relating to the making, extending, or enlarging of any dam, weir or obstruction to the passage of fish in any river or estuary or of any sewer discharging therein, must be deposited with any Fishery Board having jurisdiction over the river or estuary.

With General Post Office (l).—Every bill.

With Commissioners of Works (l).—Every bill relating to the generation or supply of electricity. Every bill affecting Crown property.

With Commissioners of Crown Lands (l).—Every bill affecting Crown property.

With Board of Education (l).—Every bill affecting charities or charitable trusts. Every bill affecting education or its endowment or altering the boundary of any county, borough or urban district, or affecting the incidence of any local rate out of which educational expenditure is payable.

With Charity Commission (l).—Every bill affecting charities or charitable trusts.

With Forestry Commission (l).—Every bill affecting property vested in or managed by the commission or containing references to the commissioners.

With Duchy of Cornwall or Lancaster (l).—Every bill affecting the Duchy.

With Somerset House (l).—Every bill altering the boundary of any county, urban district, parish or other administrative area or which relates to any matter to which the Births and Deaths Registration Acts, 1836 to 1929, or amending Acts relate must be deposited at the General Register Office.

With L.C.C. (m).—Every bill of the second class authorising any work in the administrative county of London.

With Road Authorities (a).—Every bill of the first class authorising persons other than the road authority to break up or interfere with any streets or roads must be deposited with the county, borough or district council liable for the maintenance of such streets or roads.

Deposit of Bills brought from House of Lords or House of Commons.—When a private bill has passed through all the stages in one House and is brought to the other House to be dealt with, copies of the bill must be deposited in all the above offices not later than two days after the bill is read a first time in the second House (b). [166]

DEPOSIT OF ESTIMATES.—Copies of the estimate of expenses must be deposited with the following offices not later than December 4.

With House of Lords ; Clerk of the Parliaments.—Printed copies of the estimate of expenses of the undertaking (c).

Copies of the estimate of expense of any of the works or purposes

(l) Standing Orders (H. of L.), 39 ; (H. of C.), 39.

(m) Standing Orders (H. of L.), 40 ; (H. of C.), 40.

(a) Standing Orders (H. of L.), 41 ; (H. of C.), 41.

(b) Standing Orders (H. of C.), 69.

(c) Standing Orders (H. of L.), 43, 44.

specified in Appendix C (c) which are proposed to be carried out by any municipal corpn., district council, joint board, joint committee or other local authority (c).

This estimate must be accompanied by a statement of the purposes and reasons for borrowing in cases where powers are sought to meet an excess of expenditure previously authorised, and by a statement showing, as to the local authority's area, the acreage, population, rateable value, the rates made in the preceding year, and the net balances of outstanding loans, showing separately revenue-producing undertakings, housing, education and other purposes, after deducting sinking funds (c).

With House of Commons.—Similar deposits to above must be made at the Vote Office and Committee and Private Bill Office (d).

With Board of Trade and M. of H.—Copies of the estimate of expense of any of the works or purposes specified in the Appendix to the Standing Orders proposed to be carried out by any municipal corpn., district council, joint board, joint committee or other local authority must be deposited with the Board or the Ministry, as the case may require (e).

Similar statements to those required to be deposited with Parliament must accompany the estimates.

With M. of T.—Copies of the estimate of expense in the case of works proposed by any bill relating to railways, light railways, tramways, canals, waterways, inland navigations, roads, bridges, ferries, docks, harbours or piers (f).

As to the form and details of the estimate, see Lords' Standing Orders, 44, 46, and Commons' Standing Orders, 45, 47. [167]

4. Not later than December 5. Notices to Owners, etc., in case of certain Bills.—Not later than December 5, written notice of the proposals must be given to owners, lessees and occupiers in the case of the following bills :

(1) *Bills Proposing the Compulsory Taking or User of Lands, etc.*—Notice must be given to the owners or reputed owners, lessees or reputed lessees and occupiers of any lands or houses proposed to be taken or used compulsorily or with respect to which it is proposed to impose a charge or a liability to a charge. The notice must be in the form prescribed in the Appendix to the Standing Orders (g). [168]

(2) *Tramway Bills. Frontagers.*—Notice in writing must be given to the owners or reputed owners, lessees or reputed lessees and occupiers of all houses, shops, and warehouses abutting upon any part of any street or road where for a distance of 30 feet or more it is proposed that a space less than 9 feet 6 inches will intervene between the outside of the footpath on either side of the road and the nearest rail of the proposed tramway or a less distance than 10 feet 6 inches if it is proposed to use carriages or trucks adapted for use upon railways (h). [169]

(3) *Proposed Crossing of Railway, etc., by Tramway (i).*—If the

(c) Standing Orders (H. of L.), 43, 44.

(d) Standing Orders (H. of C.), 44, 45.

(e) Standing Orders (H. of L.), 44 ; (H. of C.), 45.

(f) Standing Orders (H. of L.), 45 ; (H. of C.), 46.

(g) Standing Orders (H. of L.), 11 ; (H. of C.), 13.

(h) Standing Orders (H. of L.), 12 ; (H. of C.), 14.

(i) Standing Orders (H. of L.), 13 ; (H. of C.), 15.

proposed tramway or trolley vehicle system will cross any railway, tramway or trolley vehicle system on the level or will cross a canal by means of a bridge, or will otherwise interfere with such railway, tramway, trolley vehicle system or canal, notice must be served upon the owner or reputed owner and the lessee or reputed lessee of such railway, tramway, trolley vehicle system or canal.

The notice must specify the place or places at which plans of the proposed tramway have been or will be deposited. [170]

(4) *Proposed Abstraction of Water (k).*—When it is proposed to abstract water from any stream for the purpose of supplying any cut, canal, reservoir, aqueduct, navigation or waterwork, notice in writing must be given to owners or reputed owners, lessees or reputed lessees, and occupiers of all mills, manufactories or other works using the stream within a distance of twenty miles (measured along the stream) below the point of abstraction, unless within the twenty miles the waters join a navigable stream, in which case notice need only be given to such interests as are situate between the point of abstraction and the junction with the navigable stream.

The notice must specify the name of the stream and the parish in which the point of abstraction is situate, also the time and place of deposit of plans, sections and books of reference with county and county borough councils. [171]

(5) *Gas, Electricity, Sewage Works, Burial Grounds, etc., Bills (l).*—Where it is proposed to construct gas or sewage works or works for the manufacture of the residual products of gas or sewage, or works for the generation of electricity, or to make a sewage farm, cemetery, burial ground, crematorium, destructor or hospital for infectious diseases, notice must be served upon the owners, lessees and occupiers of every dwelling-house within 300 yards of the lands upon which the proposed work is to be constructed. [172]

(6) *Abandonment of Authorised Works (m).*—Where it is proposed to abandon works authorised by a previous Act notice in writing must be served upon owners or reputed owners, lessees or reputed lessees or occupiers of the lands in which any part of the work to be abandoned is situate. [173]

5. Not later than December 11. Notices to Owners, etc., in case of certain other Bills. Newspaper and Gazette Notices. Statement as to Working-class Houses.

NOTICE TO OWNERS, ETC.—Notice must be given to owners, lessees and occupiers not later than December 11, when the bill contains proposals in relation to the following :

(1) *Alteration or Repeal of Protective Provisions.*—When it is proposed to alter or repeal any express statutory provision for the protection of any owner, lessee or occupier of any property or for the protection or benefit of any public trustees or commissioners, corpn. or person, specifically named in the provision, notice must be given in writing of the intended alteration or repeal of such provision to all owners, lessees and occupiers, trustees, commissioners, corpsns. or persons, the

(k) Standing Orders (H. of L.), 14 ; (H. of C.), 16.

(l) Standing Orders (H. of L.), 15 ; (H. of C.), 17.

(m) Standing Orders (H. of L.), 16 ; (H. of C.), 18.

provision for whose protection it is sought to alter or repeal (*n*).

- (2) *Alteration or Repeal of Provisions Relating to Nuisance*.—When it is proposed to alter or repeal express statutory provisions relating to nuisance arising on any lands, notice must be served upon the owner and lessee of every dwelling-house situate within 300 yards of such lands (*o*). [174]

If Proposed Works Altered in First House.—In bills of the second class in which proposed works have been altered in the First House (other than alterations on petition for additional provisions), notice must be given to the owners, lessees, or in their absence to the agents or occupiers of lands through which such alteration is intended to be made; and the consent of such owners, etc., must be proved before the examiner (*p*). [175]

Mode of Making Applications and Serving Notices.—Notices must not be served or applications made on Sunday, Christmas Day, Good Friday, or Easter Monday, or before 8 a.m. or after 8 p.m. except in the case of delivery by post (*q*).

Applications must be made and notices served, either by delivery to the party entitled to the same or by leaving the same at his usual place of abode, or if absent from the United Kingdom with his agent, or by registered letter addressed to the usual place of abode and posted not later than the third day previous to the day on which such application or notice is required to be made or served.

The notice must be accompanied by a copy of the Standing Orders which regulate the time and mode of presenting petitions in opposition to bills (*r*). [176]

Proof of Service of Notice.—The service of the notice may be proved either by the written acknowledgement of the party upon whom the notice has been served, or in case of notices sent by registered post by the production of the post office receipt, provided the letter has been properly addressed and not returned by the post office as undelivered (*s*). [177]

NEWSPAPER AND GAZETTE NOTICES—*Newspaper Notice*.—Not later than December 11, the promoters must publish a notice once in each of two successive weeks, with an interval of six clear days between each publication, in the following newspapers:

- (a) In bills relating specially to any particular city, borough, town or urban or rural district in some newspaper or newspapers published in such city, borough, etc. If there be no such newspaper then in some newspaper published in the county in which such city, borough, etc., is situate; if there be no newspaper published in such county, then in a newspaper published in some county near or adjoining thereto (*t*).
- (b) In bills authorising the construction of works or the taking or compulsory user of lands or extending the time already granted for such purposes, situate in one county only, or

(*n*) Standing Orders (H. of L.), 17; (H. of C.), 19.

(*o*) Standing Orders (H. of L.), 18; (H. of C.), 20.

(*p*) Standing Orders (H. of L.), 70; (H. of C.), 70.

(*q*) Standing Orders (H. of L.), 22; (H. of C.), 24.

(*r*) Standing Orders (H. of L.), 20; (H. of C.), 22.

(*s*) Standing Orders (H. of L.), 21; (H. of C.), 23.

(*t*) Standing Orders (H. of L.), 8 (1); (H. of C.), 10 (1).

relating to an undertaking or to lands situate in one county only, or if the promoters are possessed of an undertaking situate in one county only, the notice must be published in some newspaper or newspapers published in that county, or if there be no such newspaper then in some newspaper or newspapers published in the county near or adjoining thereto (*u*). When, however, the works or lands or undertaking referred to above are situate in more than one county the notice must be published in some newspaper or newspapers of the county in which the principal office of the promoters is situate, and in some newspaper or newspapers published in each county in which any new works are proposed or in which lands are situate with respect to which new or further powers as to compulsory taking or user are proposed; but if there be no such latter newspaper then in some newspaper or newspapers published in some county near or adjoining thereto (*a*).

The promoters may, if they wish, publish only in each county so much of the notice as relates specifically to lands or works in that county provided they specify date and name of the newspapers in which the notice appears in full (*a*).

[178]

Contents of Newspaper Notice.—The notice must contain a concise summary of the purposes of the bill without reference to provisions of an ancillary, subsidiary or consequential nature, but in the case of certain bills hereinafter mentioned, the specific details must be included in the notice.

The notice must also state that on and after December 4 a copy of the bill may be inspected and copies purchased at an office in London named in the notice and at the following offices in the locality affected by the proposals:

- (a) In bills relating to any particular city, metropolitan or other borough, urban or rural district, at an office in such city, borough, etc.
- (b) In bills relating to an undertaking, at an office in the county in which the promoters' principal office is situate.
- (c) In bills authorising the construction of works, or the taking or compulsory user of lands, or extending the time previously granted for such purposes, also at an office in the county or each of the counties in which such works or land are situate (*b*).

[179]

Specific Details in Certain Cases.—

(1) *Bills of Second Class and certain Bills of First Class (c).*—In bills of the second class and bills of the first class in respect of which plans are required to be deposited the notice must also contain:

- (a) The names of the cities, metropolitan or other boroughs and urban or rural districts in, through, or into which any work is intended to be made, maintained, varied, extended or enlarged, or in which any land intended to be taken is situate, and in a rural district the names of the parishes concerned.

(*u*) Standing Orders (H. of L.), 8 (2); (H. of C.), 10 (2).

(*a*) Standing Orders (H. of L.), 8 (3); (H. of C.), 10 (3).

(*b*) Standing Orders (H. of L.), 3; (H. of C.), 3.

(*c*) Standing Orders (H. of L.), 4; (H. of C.), 4.

- (b) A statement of the officers with whom plans, sections and books of reference have been deposited in accordance with the requirements of Standing Orders.
- (c) In bills of the second class a general description of the nature of the proposed works.
- (d) In bills authorising the taking or compulsory user of any common or commonable land, the name of such common or land, the surface area proposed to be taken or used compulsorily and the name of the city, metropolitan or other borough, urban or rural district in which the land is situate, and in a rural district the name of the parish.
- (e) In bills authorising the taking or compulsory user of the surface of any public park or public open space situate wholly or partly in any city, metropolitan or other borough, or urban district or of any of the protected squares mentioned in the Schedule to the London Squares Preservation Act, 1931 (cc), the name or description of the park, etc., and the name of the city, borough, etc., in which it is situate and the surface area proposed to be taken or used. [180]

(2) *Gas Works, Burial, etc., Bills (d).*—In bills authorising the construction of gas or sewage works, or works for the manufacture or conversion of the residual products of gas or sewage, or for making or constructing a sewage farm, cemetery, burial ground, crematorium, destructor, hospital for infectious diseases or electricity generating station, the notice must specify the city, metropolitan or other borough, urban or rural district in which the above-named proposals are to be carried out, and in the case of a rural district the parish. [181]

(3) *Tramway Bills (e).*—In bills authorising the laying down of a tramway, the notice must specify the point or points and on which side of the street or road it is proposed to lay the tramway, so that for a distance of thirty feet or upwards a less distance than nine feet six inches (or ten feet six inches if it is proposed to use carriages or trucks adapted for use upon railways) will intervene between the outside of the footpath and the nearest rail of the tramway; the notice must also specify the gauge and motive power. [182]

(4) *Abstraction of Water (f).*—In bills proposing the diversion directly or indirectly of water from an existing cut, canal, reservoir, aqueduct or navigation into an existing or proposed cut, canal, reservoir, aqueduct or navigation, whether under agreement with the proprietors or not, the notice must specify the name of the cut, canal, etc., from which the water is to be diverted. [183]

Gazette Notice (g).—The promoters must, not later than December 11, publish a short notice once in the London, Edinburgh or Belfast *Gazette* according to whether the proposals affect England, Scotland, or Northern Ireland. The notice must contain :

- (a) The short title of the bill.
- (b) The name and date of publication of each newspaper in which the full notice has or will be published in accordance with Standing Orders.

(cc) 21 & 22 Geo. 5, c. xciii.

(d) Standing Orders (H. of L.), 5; (H. of C.), 5.

(e) Standing Orders (H. of L.), 6; (H. of C.), 6.

(f) Standing Orders (H. of L.), 7; (H. of C.), 7.

(g) Standing Orders (H. of L.), 9; (H. of C.), 11.

- (c) The offices at which copies of the bill may be inspected and obtained mentioned in the full notice.
- (d) In case of bills of the second class and bills of the first class in respect of which plans are required to be deposited, the officers with whom plans, sections and books of reference have been deposited in accordance with Standing Orders.

If Proposed Works Altered in First House.—In bills of the second class in which proposed works have been altered in the First House (other than alterations made on petition for additional provisions), notice of the intention to make such alteration must be published, prior to the introduction of the bill into the Second House, in the London or Edinburgh *Gazette* as the case may be, and for two successive weeks in the same newspaper of the county in which such alteration is situate (*h*). [184]

STATEMENT AS TO WORKING-CLASS HOUSES (*i*).—Where a bill contains, revives or extends power to take compulsorily or by agreement any land in any local area, and the taking involves or may involve the taking of any house or houses occupied wholly or partially by thirty or more persons of the working class, whether as tenants or lodgers, the promoters must deposit in the Committee and Private Bill Office of the House of Commons and at the M. of H. not later than December 11, a statement giving the description and postal address of each of such houses, its number on the deposited plans, the parish in which it is situate, and the number of persons of the working class residing in it, and a copy of so much of the deposited plans (if any) as relates thereto. In this Standing Order, "local area" means the administrative county of London and, outside London, any borough, urban district or rural parish. The expression "working class" is also defined. [185]

OPPOSITION

A. REQUIREMENTS OF L.G.A., 1933, AS TO OPPOSITION

Under sect. 253 of the Act, the council of a county, borough or district may oppose a local or personal bill in Parliament when satisfied that it is expedient to do so and may defray the expenses incurred in relation thereto. Sect. 254 of the Act requires that there shall be a resolution to oppose passed by a majority of the whole number of members of the local authority at a meeting held after ten clear days' notice of the meeting and its purpose has been given. The notice must be given by advertisement in one or more local newspapers circulating in the area of the local authority, and is in addition to the ordinary notice which is required to be given for the convening of a meeting of the authority.

An alteration of the law is here made by the L.G.A., 1933. Sect. 4 of the Borough Funds Act, 1872 (*j*), required the approval of the M. of H. or a Secretary of State to be obtained, before the cost of the opposition to a bill could be charged to the local rate, and also that the resolution to oppose should be published twice in a local newspaper. In their interim report, Lord Chelmsford's Committee recommended that these requirements should be dispensed with (*jj*) in the case of *opposition* to a bill, and accordingly they are not reproduced in sect. 254 of the Act of 1933. [186]

(*h*) Standing Orders (H. of L.), 70; (H. of C.), 70.

(*i*) Standing Orders (H. of C.), 48.

(*j*) 10 Statutes 561.

(*jj*) See Cmd. 4272, p. 59.

B. STANDING ORDERS AS TO OPPOSITION

Petition against Bill.—Any local authority, company, body or person wishing to oppose in Parliament the provisions of a private bill must deposit a petition with Parliament praying to be heard against the proposals.

A petitioner who has discussed clauses in one House is not precluded thereby from opposing the preamble of the bill in the Second House (*k*). [187]

Deposit of Petitions.—Petitions against a bill must be deposited with the House of Lords or House of Commons, as the case may require, not later than the times specified below :

House of Lords.—Petitions against a bill in the House of Lords must be lodged at the Private Bill Office not later than 3 o'clock in the afternoon. In bills originating in this House the deposit must be made not later than February 6 (*l*).

In the case of local bills brought from the House of Commons, the petition must be deposited not later than the seventh day after first reading (*m*).

When the times expire during a recess of the House (except deposits limited to February 6), the time is extended to the first day after the recess in which the House sits for business, other than judicial business (*n*).

House of Commons.—Petitions must be lodged at the Committee and Private Bill Office not later than January 30 (*o*). In bills brought from the Lords the petition must be lodged not later than ten clear days after the first reading (*o*). [188]

Late Petitions.—Petitioners who have failed to deposit their petition within the prescribed time will be heard against a bill only if they can satisfy the House authorities that there is good reason for their failure. In such cases it is necessary in both Houses to present a petition praying for the Standing Orders which limit the time to be dispensed with. This petition is dealt with by the Lord Chairman of the House of Lords or the Standing Orders committee of the House of Commons as the case may require. [189]

Petitions against Alterations.—In both Houses a petition against alterations in a bill may be deposited up to and during the sitting of the Committee on the bill. [190]

Form of Petition.—Precedents for common forms of petitions will be found in Butterworths' Encyclopædia of Forms and Precedents, Vol. 11, pp. 262—278. It is essential that the petition should distinctly specify the grounds upon which the petitioners object to any of the provisions of a bill. The committee will only hear petitioners on such grounds as are stated in the petition (*p*). [191]

Locus Standi.—Although any person or body may petition against a bill only those persons or bodies who are entitled to a *locus standi* will be heard by the committee.

Under the Standing Orders of both Houses a specific right to be heard is granted to certain interests in respect of particular bills.

(*k*) Standing Orders (H. of L.), 119; (H. of C.) 150.

(*l*) Standing Orders (H. of L.), 106.

(*m*) Standing Orders (H. of L.), 107.

(*n*) Standing Orders (H. of L.), 108.

(*o*) Standing Orders (H. of C.), 129.

(*p*) Standing Orders (H. of C.), 128.

Apart from these specific cases the granting of a *locus standi* is left by Standing Orders to the discretion of the House authorities.

As will be seen later the practice adopted for the purpose of determining disputed cases of *locus standi* differs in each House. [192]

Specific Locus Standi in Certain Cases.—In so far as it may affect local authorities the following are the cases in which a specific *locus standi* is granted by Standing Orders.

House of Lords.—County councils are entitled to be heard when injurious affection is alleged by a private bill relating to the water supply of any town or district proposing the construction or reconstruction of a tramway along any county road or road in the county to the maintenance and repair of which the county council contribute (g). [193]

House of Commons.—A municipal or other local authority of any town or district alleged to be injuriously affected by a bill relating to the lighting or water supply thereof, or the raising of capital for any such purpose, are entitled to be heard against the bill (r).

As in the House of Lords, county councils alleging injurious affection are entitled to be heard on a water bill or bill proposing the construction or reconstruction of a tramway along any county road or road in the county to the maintenance and repair of which the county council contribute (s).

The owner, lessee or occupier of any house, shop or warehouse in any street or road through which it is proposed to construct a tramway, who alleges in his petition that the proposed construction or use of the tramway will injuriously affect him in the use or enjoyment of his premises or in the conduct of his trade or business is entitled to be heard (t). [194]

Cases left to Discretion of House Authorities.—Apart from the specific cases mentioned above, the granting of a *locus standi* is a matter of discretion, determined in the House of Lords by the committee at the hearing of the bill, and in the Commons by the Court of Referees prior to the committee stage. The method of procedure in each House is as follows :

House of Lords.—Notice need not be given of an objection to a petitioner's *locus standi*. The practice is for the promoters to take the objection at the end of the opening speech to the committee at the hearing of the bill. After hearing arguments for and against the objection the committee give their decision on the merits of the case. The committee is not bound by precedent in this matter to such an extent as is the Court of Referees in the House of Commons.

The Standing Orders of this House do contain instructions to the committee as to certain interests which may at the discretion of the committee be granted a *locus standi*. These instructions, so far as they are likely to concern local authorities, provide that the committee may, if they think fit, grant a hearing :

To a society or association sufficiently representing a trade, business or interest in any district to which such bill relates, alleging injurious affection to such trade, business or interest (u).

(g) Standing Orders (H. of L.), 128.

(r) Standing Orders (H. of C.), 137.

(s) Standing Orders (H. of C.), 139.

(t) Standing Orders (H. of C.), 142.

(u) Standing Orders (H. of L.), 126.

To a county council or county borough council or joint committee of such councils alleging injurious affection to their district by the proposals of any bill (*a*).

The above are merely instructions as to petitioners referred to in the Standing Orders and do not comprehend every type of interest which the committee may at their discretion consider when called upon to determine a case of disputed *locus standi*.

Past decisions of committees on such cases are not recorded in any reports. The reported decisions of the Court of Referees in the Commons, though in no sense binding upon the Lords, indicate the type of apprehended injury which will secure for a petitioner a hearing before the committee. [195]

House of Commons.—In the House of Commons questions of disputed *locus standi* are determined by the Court of Referees, prior to the hearing of the bill by the committee, except when the point arises during the committee stage when it is determined by the committee (*b*).

Rules governing the procedure before the Court of Referees have been laid down by the Chairman of Ways and Means. Under these rules promoters must give formal notice of objection to the *locus standi* of a petitioner.

At the hearing before the Court of Referees the case for the petitioner is heard first, and then the promoters taking the objection are heard in reply.

The Commons Standing Orders also contain instructions as to cases in which the granting of a *locus standi* shall be a matter in the discretion of the referees. These orders provide that the referees may, if they think fit, grant a *locus standi*:

- (1) To a society or association sufficiently representing a trade, business or interest in any district to which a bill relates alleging injurious affection to such trade, business or interest (*c*).
- (2) To the municipal or other local authority having the local management of the Metropolis or any town or district, or the inhabitants of any town or district, alleging injurious affection by the bill (*d*).
- (3) To a county council or county borough council or joint committee of such councils, alleging injurious affection to the whole or part of their area (*e*).
- (4) To owners, lessees or occupiers or river conservators alleging diminution or injurious affection to water or water supply of which they may legally avail themselves (*f*).
- (5) To conservators having the control, regulation or management of any forest, common or open space alleging injurious affection (*g*).
- (6) To the owner, lessee or occupier of any house, shop or warehouse having its access materially dependent on a street or road through which it is proposed to construct a tramway, alleging that the construction or use of the tramway will

(*a*) Standing Orders (H. of L.), 127.

(*b*) Standing Orders (H. of C.), 97.

(*c*) Standing Orders (H. of C.), 135.

(*d*) Standing Orders (H. of C.), 136.

(*e*) Standing Orders (H. of C.), 138.

(*f*) Standing Orders (H. of C.), 140.

(*g*) Standing Orders (H. of C.), 141.

injuriously affect him in the use or enjoyment of his premises or in the conduct of his trade or business (*h*).

(7) Petitions alleging competition (*i*).

Cases decided by the Court of Referees will be found in the Series of *Locus Standi* Reports. Under the practice of the Court a landlord is granted a general *locus standi* against a bill proposing the compulsory taking of his property. On such bills lessees and occupiers are regarded as landlords for purposes of *locus standi*.

Ratepayers and inhabitants are not granted a *locus standi* against a bill promoted by the local authority of their district unless they can show they have special interests which will be injuriously affected. [196]

EXPENSES OF LOCAL AUTHORITY IN PROMOTION OR OPPOSITION

Under sect. 253 of the L.G.A., 1933, the council of a county, borough or district (but not a parish council) may defray the expenses incurred in the promotion of or opposition to a private bill (*j*). Under sect. 256 of the Act, no expenses incurred in the promotion of or opposition to a bill under the powers of the Act which are taxable under the Parliamentary Costs Acts, 1847 to 1879 (*k*), must be charged to the funds of the local authority unless they have been so taxed and allowed (*kk*).

The same section prohibits payment to a member of the council for acting as counsel or agent in promoting or opposing such a bill.

Under sect. 257 of the Act a county council may determine that any expenses incurred by the council in promoting or opposing a bill under the powers of the Act are to be treated as expenses incurred for special county purposes. A rural district council may determine that such expenses are to be raised as special expenses (*kk*).

If a bill promoted by a council becomes an Act, it will contain a provision authorising the council to defray the taxed costs of promoting the Act, and usually to borrow a short-term loan for that purpose. [197]

LONDON

L.C.C.—The L.C.C. possess the fullest possible powers for the promotion of bills for the improvement of London or for the benefit of the inhabitants, and for opposing bills, or taking or defending legal proceedings, in the interests of the inhabitants. These powers are derived from (*inter alia*) the Metropolis Management Act, 1855, sect. 144 (*l*), the Metropolis Management Amendment Act, 1856, sect. 10 (*m*), the L.G.A., 1888, sect. 15 (*n*), the Borough Funds Acts, 1872 and 1903 (*o*), and the County Councils (Bills in Parliament) Act, 1903 (*p*). Sect. 144 of the Metropolis Management Act, 1855, relates to the making, widening or improvement of streets, roads or ways, while sect. 10 of the Amendment Act of 1856 relates in particular to

(*h*) Standing Orders (H. of C.), 142.

(*i*) Standing Orders (H. of C.), 130.

(*j*) 26 Statutes 443.

(*k*) 12 Statutes 481, 485, 498, 503, 506, 507

(*kk*) 26 Statutes 445.

(*l*) 11 Statutes 920.

(*m*) *Ibid.*, 960.

(*n*) 10 Statutes 698.

(*o*) *Ibid.*, 559, 836.

(*p*) 10 Statutes 835.

the provision of parks, pleasure grounds, places of recreation and open spaces.

By the London Water Act, 1892 (*g*), the L.C.C. took power from time to time to pay the cost and expenses of promoting bills in Parliament relating to the supply of water in the administrative county of London and within the limits of supply of the metropolitan water companies, with powers to make enquiries (*inter alia*) as to possible sources of supply.

The County Councils (Bills in Parliament) Act, 1903, sect. 1 (4), provides that the powers conferred on county councils by that Act are in addition to, and not in derogation of, any powers possessed by the L.C.C.

Under the Standing Orders of the L.C.C. references to the Parliamentary Committee of the council include the consideration of all orders and bills affecting the county of London, the preparation and presentation of petitions, and the employment of parliamentary agents and counsel, etc. The references also include the promotion of bills, provisional orders and bills to confirm such orders as the council may have resolved to introduce into Parliament or to promote. This includes the giving of all notices, the preparation of plans and books of reference, the preparation and deposit of such bills, and all such steps as may be required to comply with the Standing Orders of Parliament. Applications for schemes under the Public Works Facilities Act, 1930 (*r*), and the promotion of various orders were also considered. [198]

Metropolitan Borough Councils.—Under sect. 6 (6) of the London Government Act, 1899 (*s*), a metropolitan borough council has the same powers of promoting and opposing bills in Parliament, and of prosecuting or defending any legal proceedings necessary for the promotion or protection of the interests of the inhabitants of their borough, as are conferred on borough councils outside London by the Borough Funds Acts, 1872 and 1903. The provisions of these Acts apply to the council of a metropolitan borough as if that council were included in the expression "governing body," and the borough were a district mentioned in that Act. [199]

As mentioned in the text, the provisions of the L.G.A., 1933, repealing and re-enacting those Acts do not apply in the Metropolis.

Metropolitan Water Board.—The Metropolitan Water Board has power to promote and oppose bills under sect. 24 (1) of the Metropolis Water Act, 1902 (*t*). [200]

(*g*) 55 & 56 Vict. c. cxxx.

(*r*) 23 Statutes 769.

(*s*) 11 Statutes 1229.

(*t*) 20 Statutes 269.

BIRTH CONTROL

	PAGE		PAGE
DEFINITION - - - -	89	GOVERNMENT POLICY IN REGARD	
OBJECTIONS TO BIRTH CONTROL -	89	TO BIRTH CONTROL - -	92
MEDICAL AND EUGENIC ASPECTS -	90	Maternity and Child Welfare	
SOCIAL ASPECT - - - -	90	Centres (including Ante-Natal	
ECONOMIC ASPECT - - - -	90	Clinics) - - - -	92
LEGAL ASPECT - - - -	91	Special Birth Control Clinics -	93
HISTORY - - - -	91	Gynaecological Clinics -	93
THE GROWTH OF PUBLIC OPINION		CLINICS ESTABLISHED BY VOLUN-	
IN THE POST-WAR PERIOD -	91	TARY SOCIETIES - - - -	94
		ACTION BY LOCAL AUTHORITIES -	94
		METHODS TAUGHT AT CLINICS -	94
		LONDON - - - -	95

See also titles :

CLINICS ;
DISPENSARIES ;
HEALTH VISITORS ;
HOSPITAL SERVICES (LONDON) ;

MATERNITY AND CHILD WELFARE ;
PUBLIC HEALTH ;
VENEREAL DISEASES.

Definition.—Birth control means the intentional avoidance of child-birth or limitation of the number of children born. It may be secured by celibacy, continence, sterilisation of the male or the female by surgical operation, production of miscarriage (abortion), or the use of various means by the male or the female whereby sexual intercourse may be experienced without conception taking place.

Although married couples may adopt contraceptive methods with a view to the complete prevention of childbirth from selfish motives, and single couples may pursue the same course in order to conceal their illicit relationship, the term “birth control” is commonly used to mean the employment of some method in association with sexual intercourse whereby married couples can avoid childbirth entirely or produce children at such intervals as they think fit, having regard to their general health, circumstances in life, and particular convictions in the matter. [201]

Objections to Birth Control.—Every section of enlightened public opinion recognises that it is immoral to advertise or encourage the use of contraceptives so as to make available for unmarried persons the means of enjoying sexual intercourse without fear of awkward consequences. There are many who are so afraid of the danger of weakening the moral fibre of the country by the dissemination of knowledge on birth control, that they favour the total prohibition of the sale of contraceptives ; others would allow their sale only on the written prescription of a qualified medical practitioner.

The use of birth control methods by married couples is, however, a subject on which there is a wide cleavage of opinion and principle. The majority of the leaders of the medical profession believe that under present-day economic conditions pregnancies should be limited in number, and that choice, not chance, should decide the date of the birth of each child ; they further hold that, as it is difficult, and in many

cases physically impossible, to practise celibacy within the state of wedlock, it is a sound practice to recommend the use of certain contraceptives which are known to be in no way injurious to health. On the other hand, the Roman Catholic Church absolutely forbids the use of contraceptives in all circumstances.

Many of the leaders of the Church of England recognise that under existing social and economic conditions it is necessary for some married couples to limit the size of their families; but they express grave doubt as to the beneficial effects of the use of mechanical and chemical devices for frustrating the biological consequences of sexual union. They believe that, where possible, it is better to secure family limitation by self-control and abstention. They dislike intensely the use of contraceptives, and feel it their duty to emphasise that parenthood must remain the primary duty of married life. Whilst deploring the extension of the practice of birth control and condemning its use from motives of ease, luxury and self-indulgence, they are nevertheless compelled to admit that circumstances may arise when a very carefully guarded use of contraceptives cannot be wholly wrong. [202]

Medical and Eugenic Aspects.—Birth control can be employed to prevent the transmission of hereditary diseases and defects, such as syphilis, tendency to tuberculosis, feeble-mindedness, insanity, etc., and to eliminate definitely injurious or low-grade stock. In cases of tuberculosis, heart or kidney disease, contracted pelvis, previous difficult or dangerous deliveries, or exhaustion due to excessive child-bearing, the health of the mother might be seriously affected or her life endangered by pregnancy, and contraception can provide an adequate safeguard. Approximately 20 per cent. of the total number of pregnancies terminate before the foetus is viable, and a large proportion of these is due to deliberate abortion. The adoption of proved and safe methods of contraception would reduce the number of miscarriages and abortions, which are commonly attended by danger to health and life. [203]

Social Aspect.—The object of birth control from the social point of view is to enable married couples with limited means to live a normal physical life, whilst keeping within reasonable bounds the size of their families, thus improving their social standard of living, reducing infant mortality, overcrowding and poverty, and preventing the degradation of parents and children. On the other hand, the widespread diffusion among young unmarried persons of a knowledge of the means of contraception might lead to a considerable increase in immorality. [204]

Economic Aspect.—The efforts of curative and preventive medicine have lengthened the average expectation of life; and the advance of applied science has led to an ever-increasing use of labour-saving machinery, with the result that the requirements of the community can be supplied by a constantly decreasing proportion of labour. It is argued that, as a result of these influences, the population of England and Wales is excessive from the economic point of view and that, with the decline in infant mortality, a high birth rate is unnecessary. With a low birth rate, leading to a smaller population, there should be less unemployment; and the almost complete absence of unemployment in France, where the practice of contraception is widespread, is instanced in support of an extended use of birth control in this country. [205]

Legal Aspect.—There is no law prohibiting the sale or use of mechanical or chemical contraceptives or their transmission through the post; there is also no legal prohibition of the issue of literature or advertisements on the subject (a). [206]

History.—Research into ancient writings shows that some form of family limitation was practised in earlier civilisations upwards of 4,000 years ago. Mechanical aids to contraception were used in England as early as the sixteenth century. At all periods in history there has been a free and frank discussion of the various methods of ensuring fertility, but the subject of birth control has been surrounded by a mass of nebulous and probably harmful information, and it is only in recent years that public opinion has demanded scientific information. England has been in the van of the movement. The Malthusian League was founded in 1877 at the time of the Bradlaugh-Besant trial. It was the first birth control organisation in the world, and the forerunner of many similar movements abroad, notably the Dutch Neo-Malthusian League, founded in 1881, and an American society with the same objects which opened its first clinic in New York in 1916. In 1912 the Malthusian League began a series of public meetings in poor parts of South London, and in the following year issued a leaflet giving detailed instructions for the use of various contraceptives. Propaganda was interrupted by the war, and was not resumed until 1921. [207]

The Growth of Public Opinion in the Post-war Period.—For many years the richer classes in this country have limited their families by the use of expensive appliances purchased from chemists, with or without medical advice; but up to twelve years ago the working class man and woman were unable to obtain reliable information on this subject. The poor could afford neither high doctors' fees nor expensive appliances, and consequently they did not limit their families, or attempted to do so by unsatisfactory methods or by the dangerous and illegal expedient of deliberate abortion.

In 1923 the Women's Co-operative Guild—the largest organisation in this country representing working-class mothers—passed the following resolution: "That this Congress urges upon the M. of H. and local health authorities the advisability of information in regard to birth control being given at all maternity and child welfare centres in the country." In 1924 the Society for the Provision of Birth Control Clinics (aa) joined in a deputation which pressed this demand on the Minister of Health. The Minister rejected the request and maintained the existing rule that exceptional cases discovered at maternity and child welfare centres, where the avoidance of pregnancy seemed desirable on medical grounds, should be referred for advice to a private medical practitioner or hospital. In the same year the Labour Women's Conference passed a resolution in favour of birth control, which was repeated at various conferences; and the Workers' Birth Control Group was founded in order to conduct propaganda within the Labour Party. A similar resolution was carried in 1925 by the National Union of Societies for Equal Citizenship.

In July, 1925, the Edmonton U.D.C. resolved to urge the Minister of Health to issue instructions allowing medical officers in charge of maternity centres to give information on birth control in cases which

(a) A Bill to regulate the advertisement and sale of contraceptives has, however, been passed by the House of Lords.

(aa) Address: No. 153a, East Street, London, S.E.17.

they consider warranted the giving of such information. The Minister replied that he had adopted the policy laid down by his predecessors with regard to the matter. This policy was based on the following principles: (1) That the maternity and child welfare centre should deal only with the expectant and nursing mother (and infant) and not with the married or unmarried woman contemplating the application of contraceptive methods; (2) that it is not the function of an ante-natal centre to give advice in regard to birth control, and that exceptional cases in which the avoidance of pregnancy seems desirable on medical grounds should be referred for particular advice to a private practitioner or hospital.

In July, 1926, the Kensington Royal Borough Council resolved "That the Minister of Health be informed that, in the opinion of this council, instruction in birth control might, with advantage, be given at the Kensington infant welfare centres by the medical officers of these institutions at their discretion and on medical grounds only."

In April, 1926, Lord Buckmaster in the House of Lords (b) moved "That His Majesty's Government be requested to withdraw all instructions given to, or conditions imposed on, welfare committees for the purpose of causing such committees to withhold from married women in their district information when sought by such women as to the best means of limiting their families." After a prolonged discussion this motion was carried by 57 votes to 44.

Resolutions in favour of the giving of contraceptive advice at maternity and child welfare institutions were passed by the Women's National Liberal Federation in 1927, and by the National Council of Women in 1929. The Society for the Provision of Birth Control Clinics co-operated in April, 1930, with a number of women's associations in organising a large conference in London, which was attended by representatives of 35 public health authorities, 16 maternity and child welfare centres, and 192 other organisations. The conference passed a resolution calling upon the Minister of Health and public health authorities to recognise the desirability of making available medical information on methods of birth control to married people who needed it.

The revolution in public opinion following the propaganda of the post-war period is illustrated by the fact that, whilst in 1920 the Lambeth Conference of Bishops condemned birth control without reserve, in 1930 it recognised the moral justification of the practice in certain circumstances by adopting a resolution by 193 votes to 67 in the following terms: "Nevertheless, in those cases where there is such a clearly felt moral obligation to limit or avoid parenthood, and where there is a morally sound reason for avoiding complete abstinence, the conference agrees that other methods may be used, provided that this is done in the light of the same Christian principles." [208]

Government Policy in Regard to Birth Control.—In July, 1930, the Minister of Health outlined (c) the policy of the Government on the use of institutions which are controlled by local authorities for the purpose of giving advice to women on contraceptive methods. This may be stated under the following three headings:

Maternity and Child Welfare Centres (including Ante-Natal Clinics).—In cases where there are *medical grounds* for giving advice on con-

(b) Parliamentary Debates, House of Lords, Wednesday, April 28, 1926, Vol. 63, No. 29.

(c) M. of H. Memorandum 153/M.C.W.

traceptive methods to married, expectant and nursing mothers already in attendance at the centres, it may be given, but such advice must be limited to *cases where further pregnancy would be detrimental to health*, and should be given at a separate session. The Minister will not sanction any proposal for the use of these centres for giving birth control advice in other cases.

Special Birth Control Clinics.—Local authorities have no general power to establish birth control clinics as such, but they are enabled (d) to exercise the powers of the P.H.A. for the purpose of the care of expectant and nursing mothers, and it may properly be held that birth control clinics can be provided for these limited classes of women. No departmental sanction which may be necessary to the establishment of such clinics for expectant and nursing mothers will be granted, except on condition that contraceptive advice will be given only in *cases where further pregnancy would be detrimental to health*.

Gynaecological Clinics.—Local authorities have power to provide clinics at which medical advice and treatment would be available for women suffering from gynaecological conditions, but the enactments governing the provision of such clinics limit their availability to sick persons (e), and any departmental sanction which may be necessary to the establishment of such clinics will be granted only on condition that (1) the clinics will be available only for women who are in need of medical advice and treatment for gynaecological conditions, and (2) advice on contraceptive methods will be given only to married women who attend the clinics for such medical advice and treatment, *and in whose cases pregnancy would be detrimental to health*.

In a circular issued in 1934, the Minister of Health intimates that he has now been advised that there is nothing to prevent a local authority from rendering a gynaecological clinic available for women suffering from forms of sickness other than gynaecological conditions. He also states that, after consideration of the Final Report of the Departmental Committee on Maternal Mortality and Morbidity, published in 1932, he is of opinion that, where a local authority have provided a clinic at which medical advice and treatment are available for married women suffering from gynaecological conditions and at which contraceptive advice is afforded to married women so suffering in whose cases pregnancy would be detrimental to health, it would be proper also for married women who are suffering from other forms of sickness, *i.e.*, tuberculosis, heart disease, diabetes, chronic nephritis, etc., and mental disorders, which are detrimental to them as mothers, to be afforded contraceptive advice at the clinic if it is found medically that pregnancy would be detrimental to health. What is, or is not, medically detrimental to health must be decided by the professional judgment of the registered medical practitioner in charge of the clinic (ee).

In a circular (f) the Minister states that the question of providing facilities for giving contraceptive advice within the limits laid down in memorandum 153/M.C.W. is a matter entirely within the discretion of the local authorities. He further states that a gynaecological clinic

(d) Notification of Births (Extension) Act, 1915, s. 2; 15 Statutes 767.

(e) P.H.A., 1875, s. 131; 13 Statutes 678; and Public Health (London) Act, 1891, s. 75; 11 Statutes 1070.

(ee) M. of H. Circular 1408, May 31, 1934.

(f) M. of H. Circular 1208, July 14, 1931.

should not be established at a maternity and child welfare centre but in separate premises or at a hospital, and that the giving of birth control advice should not be regarded as falling within the scope of the normal duties of a medical officer, who should be free to undertake or decline it. [209]

Clinics Established by Voluntary Societies.—The first birth control clinic in this country was established at No. 108, Whitfield Street, London, W.1., in March, 1921. In November of the same year the Welfare Centre for Pre-maternity, Maternity and Child Welfare opened its doors at No. 153a, East Street, Walworth, S.E.17. It was primarily intended to function as a maternity and child welfare centre at which birth control advice would be given. In less than two years it became exclusively a birth control centre, and during the first ten years over 15,000 women received contraceptive advice. The committee of management included in their functions the establishment of other birth control centres, and in 1924 changed their name to the Society for the Provision of Birth Control Clinics.

In 1924 a birth control clinic was established in North Kensington, and in the first seven years advice was given to over 3,000 women. This centre has extended its work by providing for the treatment of gynaecological ailments discovered in women attending, and is the first example in this country of a voluntary birth control clinic combined with a gynaecological clinic.

Additional voluntary birth control clinics affiliated to the Society for the Provision of Birth Control Clinics now operate in the following areas, the dates of establishment being shown in brackets :

Wolverhampton (1925), Cambridge (1925), Manchester (1926), East London (1926), Glasgow (1926), Aberdeen (1926), Oxford (1926), Birmingham (1927), Newcastle (1929), Exeter (1930), Nottingham (1930), Pontypridd (1930), Bristol (1931) and Ashington (1931).

These, together with recently established clinics at Basingstoke, Liverpool, Northampton, Barnstaple, Plymouth, Winchester and Edinburgh, give a total of 24 voluntary clinics, 23 of which are affiliated to the above-mentioned society. There are in addition numerous private clinics, conducted by medical practitioners and midwives, which are not affiliated to any organisation and of which complete records are not available. [210]

Action by Local Authorities.—Action taken by local authorities in England and Wales following the issue of memorandum 153/M.C.W. may be summarised as follows : 19 local authorities have established special birth control clinics, usually connected with maternity and child welfare centres ; 6 have set up gynaecological clinics at which birth control advice is given ; 8 refer cases to voluntary birth control clinics or private doctors, and pay the fees ; 12 have authorised their medical officers to give advice, but have not set up special clinics ; 12 have decided that birth control advice shall be given and were in July, 1933, considering schemes or have not yet taken steps to put their decisions into effect ; and 5 have either lent or hired the premises of a maternity and child welfare centre to a voluntary birth control organisation. [211]

Methods Taught at Clinics.—The methods taught at municipal and voluntary birth control clinics involve the use of mechanical appliances in conjunction with soluble pessaries, ointments and tablets which have

a spermicidal action or prevent spermatozoa from gaining access to the uterus. It is a routine procedure for each patient to be examined by a registered medical practitioner who, after considering the medical history and the findings gained from a gynæcological examination, recommends the most appropriate method or methods. The patients are requested to return at intervals for re-examination and the renewal of appliances. [212]

London.—The P.H. (London) Act, 1891, sect. 75 (g), enables the metropolitan borough councils to provide clinics at which medical advice and treatment may be available for women suffering from gynæcological ailments.

The policy of the metropolitan borough councils with respect to birth control follows, in general, the Minister of Health's Memorandum 153/M.C.W. already referred to. In the City of Westminster, the annual report of the M.O.H. for 1931 contained the statement that no action was called for by the council on that memorandum, the question of birth control advice by officers of local authorities being acutely controversial, and that at the council's maternity and child welfare centres any woman desiring advice on this subject was referred to one of the voluntary birth control clinics in London. The attitude adopted by the Kensington Royal Borough Council has already been referred to (see *ante*, p. 92). [213]

(g) 11 Statutes 1070.

BIRTHS, NOTIFICATION OF

See NOTIFICATION OF BIRTHS AND MARRIAGES.

BIRTHS, REGISTRAR OF

See REGISTRAR OF BIRTHS, DEATHS AND MARRIAGES.

BLIND ALLEY

See DEDICATION AND ADOPTION OF HIGHWAYS.

BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN

	PAGE		PAGE
EDUCATION OF BLIND AND DEAF CHILDREN - - -	96	MENTALLY DEFECTIVE CHILDREN - - -	102
1. Blindness and Deafness Defined - - -	96	1. Notification by Local Education Authority - - -	102
2. The Parent's Duty - - -	97	2. Certifying Officers - - -	103
3. Enforcement of Parent's Duty - - -	97	3. Examinations by Certifying Officers - - -	103
4. The Local Education Authority's Duty - - -	97	4. Children Placed under Supervision, Guardianship, etc. - - -	104
EDUCATION OF DEFECTIVE AND EPILEPTIC CHILDREN - - -	98	5. Reports on Mentally Defective Children - - -	105
1. The Parent's Duty - - -	98	GENERAL PROVISIONS RELATING TO THE EDUCATION OF BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN - - -	105
2. Enforcement of the Parent's Duty - - -	98	1. Age of Compulsory Education - - -	105
3. The Duty of the Local Education Authority to Ascertain what Children Defective or Epileptic - - -	99	2. Parent's Contributions towards Cost of Education - - -	106
4. Duty of the Local Education Authority to Educate Defective and Epileptic Children - - -	100	3. Religious Instruction - - -	107
5. Discontinuance of a Certified School - - -	102	EFFECT OF LOCAL GOVERNMENT ACT, 1929 - - -	107
		LONDON - - -	108

See also titles : BLIND PERSONS ;
EDUCATION ;
INFANTS, CHILDREN AND YOUNG PERSONS ;
MENTAL DISORDER AND MENTAL DEFICIENCY.

An important part of the work of a local education authority is that concerned with the education of children suffering from physical and mental defects. Part V. of the Education Act, 1921 (*a*), is devoted to this matter, the sections being divided into three groups. The first (*b*) deals with the education of blind and deaf children, the second (*c*) with defective (other than blind and deaf) and epileptic children, and the third (*d*) with the general provisions relating to blind, deaf, defective and epileptic children.

This is a convenient division of the subject and it will be followed in this article. [214]

EDUCATION OF BLIND AND DEAF CHILDREN

1. Blindness and Deafness Defined.—Unless the context requires a different meaning, the expression “blind” means too blind to be

(*a*) 7 Statutes 159.

(*b*) Ss. 51, 52 ; 7 Statutes 159.

(*c*) Ss. 53—58 (ss. 59, 60 were repealed by the Education (Institution Children) Act, 1923, s. 2 (4)) ; 7 Statutes 160—164, 229.

(*d*) Ss. 61—69 ; 7 Statutes 165—167.

able to read the ordinary school books used by children, and "deaf" means too deaf to be taught in a class of hearing children in a public elementary school (*e*). [215]

2. The Parent's Duty.—Not only is blindness or deafness no excuse for a parent's failure to cause his child to receive efficient elementary instruction in reading, writing and arithmetic (*f*), but he must also cause the child to receive instruction suitable for the particular child, that is, having regard to its defect (*g*).

Although, in regard to normal children, it is a reasonable excuse for non-attendance at school that there is not a school within three miles (or less distance if the bye-laws so prescribe) from the child's residence (*h*), this is not a reasonable excuse so far as blind and deaf children are concerned (except in the case of deaf children under seven years of age) (*i*).

Should, however, the local education authority, having regard to the defect of a child (whether physical or mental), consider that a guide should be provided to take him to and from school, they may arrange for this, and incur the necessary expense (*k*).

For blind and deaf children, compulsory education must continue until the end of the term in which they attain the age of sixteen years, and the attendance of such children may be enforced as if it were required by bye-laws made under Part IV. of the Act (*l*). [216]

3. Enforcement of Parent's Duty.—The Education Act, 1921 (*m*), makes no special provision for the enforcement of a parent's duty in regard to a blind or deaf child, as it does in the case of a defective or epileptic child (*n*). It appears, therefore, that the only way of getting a blind or deaf child into a suitable residential school against the wishes of his parent is to obtain an order committing the child to an approved school (*o*) from which, at as early a date as possible, he should be licensed to live with the superintendent of an institute providing education suitable for a blind or deaf child. [217]

4. The Local Education Authority's Duty.—If suitable and efficient provision is not otherwise made for the elementary education of blind and deaf children, it is the local education authority's duty to enable such children resident in their area to obtain that education in a day or a residential school certified by the Board of Education as suitable for that purpose (*p*).

This duty may be discharged by the local education authority in different ways, for they may acquire and maintain schools to be certified by the Board of Education, or contribute towards the establishment, enlargement, alteration and maintenance of such schools on such terms and to such an extent as the Board of Education may approve.

(*e*) S. 69 ; 7 Statutes 167. For details as to certification of blind children, see Board of Education Circular 1431 (October 5, 1933), and Ministry of Health Circular 1353 (October 5, 1933).

(*f*) S. 42 ; 7 Statutes 153.

(*g*) S. 51 (1) ; 7 Statutes 159.

(*h*) S. 49 ; 7 Statutes 157.

(*i*) S. 51 (2) ; 7 Statutes 159.

(*k*) S. 88 (2) ; 7 Statutes 178.

(*l*) Ss. 61, 138 ; 7 Statutes 165, 202.

(*m*) 7 Statutes 130.

(*n*) S. 54.

(*o*) S. 45 (b), as substituted by Children and Young Persons Act, 1933, 3rd Schedule.

(*p*) S. 52 (1) ; 7 Statutes 159.

Subject to the Board's regulations they may also, where necessary or expedient, make arrangements for the boarding out of such a child in a home conveniently near to the certified school where the elementary education is being received (*r*).

A local education authority's duty in this matter does not, however, extend to blind and deaf children who are also idiots or imbeciles, or children resident in a workhouse or in an institution to which they have been sent from a workhouse, or children boarded out under the Poor Law (*s*). All the above classes of children can be sent by the poor law authority to appropriate schools under sect. 58 of the Poor Law Act, 1930 (*t*). This exclusion of poor law children from the activities of the local education authority would, however, be negated if the scheme for the administration of poor law functions provided that all assistance to blind and deaf children should be provided under the Education Act, 1921, instead of under the Poor Law Act, 1930 (*u*).

Where a local education authority contribute to the establishment, enlargement, or alteration of a certified school, the terms of the contribution approved by the Board of Education must, where the school is maintained by another authority, include security for the repayment of the value of the contribution in the event of the school's ceasing to be certified. Provision may also be made for representation of the contributing authority on the governing body of the school to which they contribute in cases where it appears to the Board that representation is practicable and expedient (*v*). [218]

EDUCATION OF DEFECTIVE AND EPILEPTIC CHILDREN

This section of the article deals with children who are defective or epileptic. It should be clearly understood that blind and deaf children—who have been the subject of the previous section of the article—are not here under consideration, and wherever the expression "defective" is used it means all children who are physically or mentally defective except those who are blind or deaf.

1. **The Parent's Duty.**—The duty of a parent to cause his child to receive elementary instruction in reading, writing and arithmetic (*a*), in the case of defective and epileptic children over the age of seven, includes the duty of sending such a child to a special class or school certified by the Board of Education for such children, where there is such a class or school within reach of the child's residence. A parent will not be excused from this duty on the ground alone that a conveyance or a guide is necessary (*b*).

A parent may, however, withdraw his child from attendance at a special class or school at any time provided that he satisfies the local education authority that he will make suitable provision for the child's education in some other way (*c*). [219]

2. **Enforcement of the Parent's Duty.**—If a local education authority, after consultation with the parent of a defective or epileptic child, are

(*r*) S. 52 (1); 7 Statutes 159.

(*s*) S. 52 (2) (as amended by the Education (Institution Children) Act, 1923, s. 2); 7 Statutes 159.

(*t*) 12 Statutes 998.

(*u*) For effect of L.G.A., 1929, see *post*, p. 107.

(*v*) S. 52 (3); 7 Statutes 160.

(*a*) S. 42; 7 Statutes 153.

(*b*) S. 53; 7 Statutes 160. See also *post*, p. 99.

(*c*) S. 54 (3); 7 Statutes 161.

satisfied that the parent is not making suitable provision for the child's education, they may require him to send the child to a suitable certified class or school. If he fails without reasonable excuse to do so, the authority may complain to a court of summary jurisdiction and apply for an order requiring the child to be sent to such a class or school. Before complaining to the court, it is essential that it should be ascertained that the school is willing to receive him. Should he so desire, the parent may himself select a suitable school or class, but if he does not do so, the court will order the child to go to the school which they consider suitable. An order of the court is sufficient authority for the conveyance of the child to the class or school named in the order (*d*).

Owing to the absence of a suitable class or school near the residence of the child, it may be desirable to send him to a residential school. If this course is advisable, the court must not make an order unless the consent of the parent has been obtained in writing. But this may be dispensed with, if it is proved to the satisfaction of the court that the consent is being unreasonably withheld, or that the parent cannot be found. But if a parent withholds his consent with the *bona fide* intention of benefiting his child, this must not be deemed to be unreasonable (*e*).

In the event of the court's refusing to make an order, they must award costs to the parent, which should include compensation for the expense, trouble and loss of time incurred in or incidental to his attendances at court; but they are not bound to award any costs when they consider there is good reason for not so doing (*f*).

These provisions for compelling a parent to cause his defective or epileptic child to attend a special class or school are in place of, and not in addition to, those that apply to normal children, that is, children who do not suffer from physical or mental defects (*g*).

A local education authority, in carrying out their duties of ascertaining what children in their area are defective or epileptic (*h*) have power to insist that a child shall be medically examined, and, if a parent fails to comply with this requirement he will be liable to a fine not exceeding five pounds (*i*). [220]

3. The Duty of the Local Education Authority to Ascertain what Children are Defective or Epileptic.—The first duty imposed on a local education authority in regard to defective and epileptic children is, with the approval of the Board of Education, to make arrangements for ascertaining what children in their area, not being imbecile (*k*), are by reason of mental or physical defect incapable of receiving proper benefit from the instruction given in an ordinary public elementary school. This category must not include children who are merely dull or backward, but it should include those who, although defective, would benefit from instruction in special classes or schools for defective children (*l*). Under the heading of "defective" would be included

(*d*) S. 54 (1); 7 Statutes 160. The Lord Chancellor may by rules assign the hearing of applications for orders under this section to juvenile courts; see the Children and Young Persons Act, 1933, s. 46 (3).

(*e*) S. 54 (1), proviso (i.); 7 Statutes 160.

(*f*) S. 54 (1), proviso (ii.); 7 Statutes 161.

(*g*) S. 54 (2); 7 Statutes 161.

(*h*) S. 55 (1); 7 Statutes 161.

(*i*) S. 55 (5); 7 Statutes 162.

(*k*) For definition of "imbecile," see Mental Deficiency Act, 1927, s. 1 (1) (b); 11 Statutes 160, and p. 102, *post*.

(*l*) S. 55 (1) (a); 7 Statutes 161.

children who are crippled or delicate, and those suffering from heart disease.

It is also the duty of the authority to ascertain what children (excluding idiots or imbeciles) in their area are unfit by reason of severe epilepsy to attend the ordinary public elementary schools (*m*).

In connection with the exclusion of idiots and imbeciles under this heading it should be borne in mind that they are to be dealt with by the local education authority under the Mental Deficiency Acts, 1913 to 1927 (*n*).

In making these arrangements under the Education Act, 1921, an authority must provide facilities to enable a parent, who desires to have his child examined, to present the child for examination, even though the authority may not have required him to do so (*o*). When a child is found to be defective or epileptic a certificate to this effect must be given by a qualified medical practitioner—in most cases this will be the school medical officer—who has been approved by the Board of Education for the purpose. Also the head teacher of the school that the child has been attending, or such person as the authority may appoint, must be consulted by the medical practitioner before giving the certificate, if requested by the parent, or directed by the authority. A copy of the report by the head teacher or other person appointed should be forwarded to the local education authority (*p*).

It is clearly laid down that in any legal proceedings by a local education authority the certificate of the appropriate medical practitioner stating that a child is defective or epileptic shall be sufficient evidence of the facts contained therein, unless the parent or guardian of the child requires the doctor to be called as a witness. The parent may, if he wishes, give evidence in order to disprove the correctness of the certificate (*q*). But it is important to note that in such proceedings, a magistrate is not entitled to form his own opinion as to whether a child is mentally defective or not by a personal investigation, such as asking the child questions to test his ability or attainments. A magistrate must have regard to the practitioner's certificate (*r*).

When a child recovers from his defect or epilepsy, and is consequently discharged from a special class or school, the certificate whereby he was certified as defective or epileptic should be returned to the parent of the child by the local education authority. The consent of the child or the parent must then first be obtained before the certificate can be received in evidence in any legal proceedings (*s*).

Should there be doubt as to whether a child is defective or epileptic, the Board of Education must decide the matter (*t*). [221]

4. Duty of the Local Education Authority to Educate Defective and Epileptic Children.—Having ascertained what children in their area are defective or epileptic, the authority may, or in the case of children over the age of seven must, make provision for their education. This may be done by establishing special schools for such children, or in the case of epileptic children over the age of seven, and defective

(*m*) S. 55 (1) (b) ; 7 Statutes 161.

(*n*) 1913 Act, s. 31 ; 11 Statutes 180 ; 1927 Act, s. 1 (1) ; 11 Statutes 160.

(*o*) S. 55 (2) ; 7 Statutes 161.

(*p*) S. 55 (3) ; 7 Statutes 162.

(*q*) S. 55 (4) ; 7 Statutes 162.

(*r*) *R. v. De Grey, Ex parte Fitzgerald* (1913), 77 J. P. 463 ; 19 Digest 569, 98.

(*s*) S. 55 (4) ; 7 Statutes 162.

(*t*) S. 55 (6) ; 7 Statutes 163.

children, either by establishing special schools or by providing special classes in public elementary schools, or by boarding out the children in houses near a certified special class or school (*u*).

Apparently the chief method contemplated by the Act for providing for defective children is by means of a day school or class which a child may reach from its own home, with the help, if necessary, of a guide or conveyance, and the education authority which makes this provision may compel the parent to send the child to such a school. These classes or schools are termed "classes" or "schools" according as they are attached to ordinary public elementary schools or are independent of them respectively.

There is, naturally, a divergence of practice among education authorities as far as provision for the education of defective and epileptic children is concerned. Some authorities depend entirely upon schools and institutions owned by other authorities, or provided by private bodies, while others establish schools or classes of their own. In the former case, difficulties are often experienced in placing children suitably, and the questions of distance from the child's home and the possibility of having to wait for a vacancy often render the obtaining of the parent's consent a difficult matter.

But in any case the wishes of the parent should be ascertained and, as far as possible, acted upon, in placing a defective or epileptic child in a special class or school (*a*). A personal interview in such matters is frequently productive of a better understanding and a more satisfactory arrangement than protracted correspondence, and not infrequently obviates proceedings in court.

Sect. 2 of the Education (Institution Children) Act, 1923 (*b*), excludes from the duty of the local education authority the reception as a boarder in a certified boarding school established by them under Part V. of the Act of 1921 of any child who belongs to another local education authority's area, or who resides in a workhouse or any institution to which he has been sent by the poor law authority, or has been boarded out by them, unless the other authority are willing to contribute to the expenses of the education and maintenance of the child; but this limitation would practically cease to operate as respects poor law children, if the scheme of the poor law authority provided that assistance to such children should be given under the Education Act, 1921, instead of the Poor Law Act, 1930 (*bb*).

A local education authority are not bound to provide board and lodging for a defective or epileptic child unless suitable provision for his education cannot be made in any other way, and unless the parliamentary grant in respect of such child is not less than half the cost of (1) conveying the child to and from its school; (2) educating, boarding, lodging and medically attending and treating the child, including, in the case of a school provided by the local education authority, the loan charges, or the rent or other similar outlay in providing the school (*c*).

Neither is an authority under a duty to establish a school for boarding and lodging defective and epileptic children unless there are not less than forty-five such children belonging to their area for whose education suitable provision cannot be made in any other way (*d*).

The powers conferred on a local education authority include not

(*u*) S. 56 (1); 7 Statutes 163.

(*b*) 7 Statutes 228.

(*bb*) For effect of L.G.A., 1929, see *post*, p. 107.

(*c*) S. 56 (2); 7 Statutes 163.

(*a*) S. 58; 7 Statutes 164.

(*d*) *Ibid*.

only those of establishing or acquiring and maintaining certified special schools for defective or epileptic children, but also those of contributing (on such terms and to such extent as the Board of Education may approve) towards the establishment, enlargement, alteration and maintenance of certified schools (*e*).

From time to time defective and epileptic children must be examined in order to ascertain whether they have attained such a mental or physical condition as to be able to attend an ordinary public elementary school. Further, a parent has the right to have his child examined at any time, provided that at least six months shall have elapsed since the last examination (*f*). [222]

5. Discontinuance of a Certified School.—Should the average attendance for the previous three years of defective or epileptic children at a certified class or school provided by a local education authority fall below fifteen, then the local education authority may, with the approval of the Board of Education, discontinue the school or class. If this is done, the authority should find alternative provision for the education of defective and epileptic children in their area (*g*). [223]

MENTALLY DEFECTIVE CHILDREN

1. Notification by the Local Education Authority.—As respects defective children within the meaning of the Mental Deficiency Act, 1913 (*h*), local education authorities must also perform such duties as are imposed on them by that Act. Sect. 31 of the Act (*i*) placed on local education authorities the duty to make arrangements, subject to the approval of the Board of Education, for ascertaining (1) what children within their area are defective within the meaning of the Act (see *infra*), and (2) which of such children are incapable by reason of mental defect of receiving benefit, or further benefit, from instruction in special schools or classes. It is also their duty to notify to the mental deficiency authority under the Act (*k*) the names and addresses of defective children as the Act requires (*l*) (see *infra*).

In case of doubt, the Board of Education must decide whether a child is or is not capable of receiving benefit from attending a special school or class or whether the retention of the child would be detrimental to the interests of the other children (*m*).

Mental defectives are of four classes, namely: (i) idiots, that is to say, persons in whose case there exists mental defectiveness of such a degree that they are unable to guard themselves against common physical dangers; (ii) imbeciles, that is to say, persons in whose case there exists mental defectiveness which, though not amounting to idiocy, is yet so pronounced that they are incapable of managing themselves or their affairs or, in the case of children, of being taught to do

(*e*) S. 56 (3); 7 Statutes 164.

(*f*) S. 56 (5); 7 Statutes 164.

(*g*) S. 57; 7 Statutes 164.

(*h*) 11 Statutes 160. See Education Act, 1921, s. 55 (7); 7 Statutes 163.

(*i*) 11 Statutes 180.

(*k*) Councils of counties or county boroughs, or for Lancashire, and the county boroughs in Lancashire, the Lancashire Asylums Board (Mental Deficiency Act, 1913, ss. 27, 34; 11 Statutes 176, 181). As to Staffordshire, see s. 18 of the Staffordshire Asylums Act, 1922 (12 & 13 Geo. 5, c. xcii.).

(*l*) S. 31 (1); 11 Statutes 180.

(*m*) *Ibid.*

so ; (iii) feeble-minded persons, that is to say, persons in whose case there exists mental defectiveness which, though not amounting to imbecility, is yet so pronounced that they require care, supervision and control for their own protection or for the protection of others or, in the case of children, that they appear to be permanently incapable of receiving proper benefit from the instruction in ordinary schools ; and (iv) moral defectives, that is to say, persons in whose case there exists mental defectiveness coupled with strongly vicious or criminal propensities and who require care, supervision and control for the protection of others (*n*).

A local education authority must also notify the mental deficiency authority (*o*) if any child, over the age of seven and under the age of sixteen, cannot be instructed in a special school or class without detriment to the interests of the other children or when there are special circumstances that render it desirable that a child should be dealt with by being placed under supervision or guardianship or sent to an institution (*p*).

Also, there must be similar notification in the case of children who on or before attaining the age of sixteen are about to be withdrawn or discharged from a special school or class and in whose case the local education authority are of opinion that it would be for their benefit that they should be dealt with by being placed under supervision or guardianship or sent to an institution (*q*).

In order that all mentally defective children may be ascertained, a local education authority should obtain the co-operation of all its officers who are likely to assist. Of these the heads of schools and the school attendance officers are, apart from the school medical officer, the most important.

Heads of public elementary schools should bring to the notice of the local education authority any children who appear, by reason of mental defect, to be incapable of receiving proper benefit from the instruction given.

The school attendance officer should similarly inform the authority of children not attending school who appear, or are reputed to be, defective within the meaning of the Mental Deficiency Act, 1913, as amended (*r*). [224]

2. Certifying Officers.—In order that a local education authority's duties in connection with mentally deficient children may be carried out, it is essential that Certifying Officers should be appointed. As a rule the officer will be a school medical officer of the authority, but any other duly authorised practitioner may be nominated. In either case the approval of the Board of Education to the appointment is required. [225]

3. Examinations by Certifying Officers.—Certifying officers should examine all children whose names have been submitted by the school medical officer, the heads of schools or the school attendance officer, and also make arrangements for enabling any parent who is of opinion

(*n*) Mental Deficiency Act, 1927, s. 1 ; 11 Statutes 160.

(*o*) For mental deficiency authorities, see note (*k*), *ante*, p. 102.

(*p*) Mental Deficiency Act, 1913, s. 2 (2), as amended by Mental Deficiency Act, 1927, s. 2 ; 11 Statutes 162.

(*q*) *Ibid.*

(*r*) 11 Statutes 160, 200.

that his child should be dealt with under Part V. of the Education Act, 1921, to present the child for examination. These children should be examined within three months of their attaining the age of seven years, and at such other times that appear to the local education authority to be desirable.

After the child has been examined, the Certifying Officer's report must be rendered on Form 306 M (s), which should be accompanied by Form 302 M.

Where the local education authority direct, or the parent of the child requests, the Certifying Officer should consult the head of the school where the child has been attending, or any other person whom the local education authority may appoint, before giving a certificate.

The Board of Education should be referred to when a local education authority are in doubt whether, after having considered the report of the Certifying Officer, a child is or is not capable of receiving benefit from instruction in a special class or school, or whether a child cannot be instructed in a special class or school without detriment to the interests of the other children.

Periodical examination should be carried out by Certifying Officers of all mentally defective children who are being educated in special schools or classes maintained by a local education authority with a view to ascertaining in each case (1) whether a child can be discharged from the special school or class on the ground that he has attained such a mental condition as to be fit to attend the ordinary classes of a public elementary school; (2) whether he is incapable of receiving further benefit from instruction in a special school or class; or (3) whether he cannot be instructed in a special school or class without detriment to the interests of the other children.

Such examinations should be made at intervals of not more than twelve months. If, however, a parent claims that his child shall be examined, this may be done, provided that six months have elapsed since he was last examined.

Arrangements of a similar nature should be made by a local education authority who send mentally defective children either to schools or classes maintained by another local education authority or another body. In these cases the local education authority sending the children should arrange for reports to be forwarded to them at intervals of not more than twelve months. [226]

4. Children placed under Supervision, Guardianship, etc.—If a local education authority are satisfied, upon representation made to them or otherwise, that it is desirable that a mentally defective child of the age of seven years or upwards who is certified as incapable of receiving benefit from instruction in a special school or class under sect. 56 of the Education Act, 1921 (t), should be dealt with by way of supervision or guardianship or by being sent to an institution under the Mental Deficiency Act, 1913, as amended (u), they should notify the case to the Board of Education, together with such particulars as the Board may require. If the Board certify that there are special circumstances which render it desirable that the child should be dealt with in this way under the Mental Deficiency Act, 1913, as amended, the local education

(s) See Board of Education Circular No. 1359 of April 23, 1925 ("Reports on Mentally Defective Children").

(t) 7 Statutes 163.

(u) 11 Statutes 160, 200.

authority should notify the name and address of the child to the mental deficiency authority (*a*).

There should be a similar notification in the case of a child who, on or before attaining the age of sixteen, is about to be withdrawn or discharged from a special class or school for defective children and in whose case the local education authority are of opinion that he should be sent to an institution or placed under guardianship or supervision (*b*). [227]

5. Reports on Mentally Defective Children.—Although the Mental Deficiency Acts (*c*) do not specify the form of the medical examination, or of the report, it is usual for Form 306 M of the Board of Education or some slight modification thereof to be used. The Board of Education have no objection to an alternative, provided that substantially the same information is given. In any case the aim is to present a complete picture of the child and the main factors that have influenced his development, so that the Certifying Officer may have all the relevant points clearly before him, and that the Board of Education may be able to decide on the case should it be referred to them.

Not only should there be available the school medical officer's notes on the case on the occasion of routine medical inspections, but information contributed by the parents, the teacher, the school nurse, and any social agency should also be at hand before the Certifying Officer makes his medical examination.

The report of the head of the school may be rendered on Form 41 D, which incorporates certain recognised tests of scholastic attainments.

Children who are certified to be idiots, imbeciles, or moral defectives (if they are not also blind or deaf) or who, on or before attaining the age of sixteen, are about to be withdrawn or discharged from a special class or school, and who, in the opinion of the local education authority should be placed under supervision or guardianship or sent to an institution, may be notified to the Mental Deficiency Committee without any reference to the Board of Education, but in all other cases notification can only legally be carried out after reference to the Board (*d*). [228]

GENERAL PROVISIONS RELATING TO THE EDUCATION OF BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN

1. Age of Compulsory Education.—The period of compulsory education extends in the case of blind children from the age of five (or, if a bye-law so provides, six), and in the case of deaf, defective and epileptic children from the age of seven, until the end of the term in which they attain the age of sixteen (*e*).

Should, however, a child cease to be defective after the end of the term in which it attains the age of fourteen and before the end of the term in which it attains the age of sixteen, it appears that no further education could be enforced.

(*a*) For mental deficiency authorities, see note (*k*), *ante*, p. 102.

(*b*) See Model Arrangements under s. 55 (1) of the Education Act, 1921; 7 Statutes 161, and s. 2 (2) of the Mental Deficiency Act, 1913, as amended by the Mental Deficiency Act, 1927, s. 2; 11 Statutes 162. See also the Mental Deficiency (Notification of Children) Regulations, 1928 (S.R. & O., 1928, No. 659), and the Board of Education Circular No. 1399, of September 14, 1928.

(*c*) 11 Statutes 160, 200.

(*d*) See Board of Education Circular 1359, April 23, 1925 ("Reports on Mentally Defective Children").

(*e*) Education Act, 1921, ss. 42, 51 (2), 53, 54 (1), 61, 138; 7 Statutes 153, 159, 160, 165, 202.

The same methods of enforcing the attendance at school of these children is available as in the case of normal children to whom the bye-laws relating to school attendance apply (*f*).

Where a parent has habitually and without reasonable excuse neglected to provide efficient elementary instruction for his child, and it is proposed to institute proceedings against the parent, these should be taken under the Act and not under the bye-laws (*g*).

If an authority have obtained an order requiring the parent of a defective child to send him to a special school until the age of sixteen, and the parent of the child disobeys the order and sends him to work after the age of fourteen, the magistrates, upon an information being laid against the parent for non-compliance with the order, must only consider whether the order has been obeyed or not, and not take into consideration the sufficiency of the grounds on which the order was made (*h*). They must not consider a wilful disobedience of an order as a trivial offence of such a character as to dismiss it under the Probation of Offenders Act, 1907 (*i*). Neither need such an order for attendance at school show on the face of it the evidence upon which it was made (*h*). [229]

2. Parent's Contributions towards Cost of Education.—A parent is liable to contribute towards the expenses of the special education of his blind, deaf, defective or epileptic child where the local education authority have incurred costs of this nature, but the weekly sum which the parent is required to pay must be one that has been fixed by agreement between him and the local education authority, and regard must be had to the authority's duty to provide sufficient elementary school accommodation without the payment of fees (*k*). The expression "expenses" when used in this connection means the expenses of, and incidental to, the attendance of a child at a special school, the maintenance and boarding out of the child while so attending, and the expenses of conveying the child to and from the school (*l*). This means that the contribution should be agreed by both parties, who must bear in mind that the authority may be paying for the maintenance of the child, including the provision of food and medical treatment, in the place of the parent. In practice, the parent is usually only able to contribute quite a small proportion of the actual cost to the authority.

In the event of the parent and the local education authority failing to agree as to the contributions that the former should make, the matter may be settled by a court of summary jurisdiction. Whether the sum is settled between the authority and the parent, or is fixed by the court, it may be recovered by the local education authority summarily as a civil debt (*m*).

Although the parent's weekly contribution is usually agreed before the child is admitted to the special school, the contribution so agreed should not be considered as necessarily fixed for the duration of the child's attendance at the school. The parent's financial circum-

(*f*) S. 61. But see s. 54 (2) ; 7 Statutes 165, 161.

(*g*) *Re Murphy, Ex parte School Board for London* (1877), 2 Q. B. D. 397 ; 19 Digest 564, 64.

(*h*) *Rennie v. Boardman* (1914), 78 J. P. 420 ; 19 Digest 565, 72.

(*i*) 11 Statutes 365.

(*k*) Education Act, 1921, s. 65 ; 7 Statutes 166.

(*l*) Education Act, 1921, s. 69 ; 7 Statutes 167.

(*m*) S. 65 ; 7 Statutes 166. For procedure for the summary recovery of civil debts in a court of summary jurisdiction, see Summary Jurisdiction Act, 1879, s. 35 11 Statutes 342.

stances, which are invariably the basis upon which the contribution is fixed, frequently alter, and it is therefore a wise practice to review the matter from time to time. A court which made an order for a contribution may at any time vary or revoke such order (*n*).

An authority are under a statutory duty to enforce an order for a contribution, and any sum so received may be applied in aid of their general expenses (*o*).

The rights of a parent to select a certified class or school (*p*) are carefully safeguarded in that the local education authority must not exert any financial influence over him in such a way as to deprive him of his power of choosing a school. Payments must not be made on condition that a child shall attend a certified school other than that reasonably selected by the parent, nor refused because the child attends, or does not attend, any particular certified school (*q*). [230]

3. Religious Instruction.—In selecting a school for a blind, deaf, defective or epileptic child, a local education authority must be guided by the rules laid down by the Children Act, 1908 (*r*), and if a child is boarded out the local education authority shall, if possible, arrange for the boarding out being with a person belonging to the same religious persuasion as the parent (*s*).

A child attending a special school must not, however, be compelled to receive religious instruction contrary to the wishes of the parent. As far as possible he should have facilities for receiving religious instruction, and attend religious services conducted in accordance with the parent's persuasion. On a child's admission to a special school, record should be kept of the parent's religious persuasion (*t*). [231]

EFFECT OF LOCAL GOVERNMENT ACT, 1929

In connection with the transfer of poor law functions to the county councils and county boroughs made by Part I. of the L.G.A., 1929 (*u*), it is laid down (*a*) that a council in preparing their scheme for the administration of the transferred functions shall have regard to the desirability of securing that, as soon as circumstances permit, all assistance that can lawfully be provided otherwise than by poor relief (*e.g.* by means of the Education Act, 1921, or the Mental Deficiency Act, 1913) shall be so provided.

This principle has particular application to blind, deaf, defective and epileptic children, since Part V. of the Education Act, 1921 (*b*), contemplates that in appropriate cases the local education authority for elementary education will provide for their maintenance as well as for their education in residential schools, and confers full powers for this purpose.

The Board of Education, in Circular 1411 (*c*), called the attention

(*n*) S. 65 (3); 7 Statutes 166.

(*o*) S. 65 (2); 7 Statutes 166.

(*p*) S. 54 (1); 7 Statutes 160.

(*q*) S. 66; 7 Statutes 167.

(*r*) 8 Edw. 7, c. 67, now mainly repealed. But see Children and Young Persons Act, 1933, s. 68; 26 Statutes 211.

(*s*) Education Act, 1921, s. 64 (3); 7 Statutes 166.

(*t*) S. 64 (4).

(*u*) 10 Statutes 883.

(*a*) In s. 5; 10 Statutes 885.

(*b*) 7 Statutes 159.

(*c*) February 6, 1931 ("Special Schools and Institutions for Blind, Deaf, Defective and Epileptic Children").

of local education authorities to the desirability of exercising these powers in relation to children whose fees at residential special schools would normally, under the former practice, have been paid by the poor law authorities. [232]

London.—The L.C.C., as local education authority, are responsible for the administration of Part V. of the Education Act, 1921, and have established day and residential special schools for blind, deaf and defective children. In addition it has arrangements with outside authorities and bodies to send children to schools maintained by them. The council have also eight open-air day schools and three residential open-air schools at Bushey Park (boys), Margate (girls) and St. Leonards-on-Sea (boys and girls). To these open-air schools children certified by the Medical Officer as incapable of receiving full benefit from the instruction given in the ordinary schools are sent for a change of air. [233]

BLIND PERSONS

	PAGE		PAGE
BEFORE THE BLIND PERSONS ACT,		BLIND CHILDREN UNDER FIVE	
1920 - - - - -	108	YEARS OF AGE - - - - -	113
BLIND PERSONS ACT, 1920 - - - - -	109	EMPLOYMENT OF THE BLIND—	114
PENSIONS FOR BLIND PERSONS - - - - -	110	(i.) Workshops - - - - -	114
REGISTRATION OF CHARITIES - - - - -	110	(ii.) Home Workers' Schemes - - - - -	114
SCHEMES TO PROMOTE THE WEL-		UNEMPLOYABLE BLIND - - - - -	115
FARE OF BLIND PERSONS - - - - -	111	HOME TEACHING SERVICE - - - - -	116
CERTIFICATION AND REGISTRATION	112	L.G.A., 1929 - - - - -	116
DEFINITIONS OF BLINDNESS - - - - -	112	MISCELLANEOUS - - - - -	118
ORDINARY RESIDENCE - - - - -	113	PREVENTION OF BLINDNESS - - - - -	119
		LONDON - - - - -	119

See also titles :

BALLOT; BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN; CHARITIES;	ELECTIONS; OLD AGE PENSIONS COMMITTEES; WIRELESS.
--	---

Before the Blind Persons Act, 1920.—Until the beginning of the last decade the care of blind persons was largely the responsibility of voluntary agencies who were dependent in the main upon the charitable public for funds to carry on their work.

Prior to the Blind Persons Act, 1920 (*a*), local authorities were under no obligation to formulate, nor had they the power to implement, a comprehensive scheme for the welfare of blind persons.

In December, 1917, in accordance with one of the recommendations of the Departmental Committee on the Welfare of the Blind (*b*), a special department was established in the Local Government Board charged

(*a*) 20 Statutes 593 *et seq.*

(*b*) Report of the Departmental Committee on the Welfare of the Blind (Cd. 8655), 1917.

with the general care and supervision of the blind, and an advisory committee was appointed by the President of the Local Government Board to advise the Board on matters relating to the care and supervision of the blind in England and Wales, including any question which might be specially referred to them by the Board. Ten reports have been issued by the advisory committee together with a special report on the unemployable blind, and a handbook on the welfare of the blind in England and Wales (*c*). These reports form a valuable record of the work conducted on behalf of the blind in England and Wales.

By sect. 2 of the Ministry of Health Act, 1919 (*d*), the Minister of Health was directed to take all such steps as might be desirable to secure the preparation, effective carrying-out and co-ordination of measures for the treatment and care of the blind.

On August 7, 1919, the M. of H. circulated a scheme for the payment of grants to approved agencies in aid of certain services carried on for the benefit of the blind (*e*).

These grants became payable as from July 1, 1919, and they continued to be payable until March 31, 1930, when they were discontinued as a result of the L.G.A., 1929 (*f*). Considerable development of the services for the blind resulted from the decision to pay grants in aid of such services. Since the discontinuance of these grants, many local authorities have adopted the same capitation rates for grants paid by them in aid of extensions of the services. [234]

Blind Persons Act, 1920.—The Blind Persons Act, 1920 (*g*), came into operation on September 10, 1920. The Act was passed with the object of promoting the welfare of blind persons. It aims at achieving this object by (i.) reducing the age at which blind persons are eligible to receive pensions under the Old Age Pensions Acts, 1908 (*h*) to 1919, from seventy to fifty years; (ii.) requiring county and county borough councils to make arrangements, to the satisfaction of the Minister of

(*c*) 1st Report 1918—19, 9*d*. net; 2nd Report 1919—20, 6*d*. net; 3rd Report 1921—22, 6*d*. net; 4th Report 1922—23, 6*d*. net; 5th Report 1923—24, 6*d*. net; 6th Report 1924—26, 9*d*. net; 7th Report 1926—27, 6*d*. net; 8th Report 1928—29, 6*d*. net; 9th Report 1930, 6*d*. net; 10th Report 1931—32, 6*d*. net; Report on the Unemployable Blind, 1929, 2*d*. net; Handbook on the Welfare of the Blind in England and Wales, revised edition (1934), 1/- net.

(*d*) 3 Statutes 416.

(*e*) M. of H. Circular 7/B.D. and Regulations and Rules made by the Ministry, August 7, 1919.

The annual grants to approved agencies were at the following rates:

Workshops—£20 per blind worker.

Home Workers—£20 per blind worker.

Homes—£13 per blind resident.

Hostels—£5 per blind resident.

Home teaching—£78 per teacher.

Initial expenditure in respect of tools and equipment for home-workers—50 per cent. of expenditure.

Book-production—2*s*. 6*d*. per volume; 2*d*. per copy of a magazine, periodical or sheet music.

Counties Associations—£20 per 100 of registered blind persons resident in area.

Capital expenditure on the part of a local authority in connection with provision of new accommodation or equipment was eligible to rank for grant at the rate of 50 per cent. (Circular 133).

Where local authorities made direct provision for carrying on any of the grant-earning services, annual grants computed on the same capitation basis were payable by the Ministry (Circular 195).

(*f*) S. 85 and 2nd Schedule; 10 Statutes 937, 979.

(*g*) 20 Statutes 593 *et seq.*

(*h*) 20 Statutes 580 *et seq.*

Health, for promoting the welfare of blind persons ordinarily resident within their area; (iii.) requiring local education authorities to make adequate and suitable provision for the technical education of blind persons ordinarily resident in their area who are capable of receiving and being benefited by such education; and (iv.) making provision for the registration of charities for the blind. [235]

Pensions for Blind Persons.—By sect. 1 of the Blind Persons Act, 1920, the statutory age for the receipt of an old age pension in the case of a person who is “so blind as to be unable to perform any work for which eyesight is essential,” is reduced from seventy to fifty years (*i*). Pensions are awarded to blind persons at the same rates and on the same conditions as apply to other beneficiaries under the Old Age Pensions Acts, except that a blind claimant who is a natural-born British subject must satisfy the pension authorities that he has resided in the United Kingdom for at least twelve years since the age of thirty (instead of fifty as in the case of other claimants).

Every claimant for a pension under sect. 1 of the Blind Persons Act, 1920, has not only to satisfy the pension committee as to his age, nationality, residence and means, as required by the Old Age Pensions Acts, but also to submit evidence of blindness.

In the course of his investigation of the claim, the pension officer may obtain information from the local authority or the voluntary agency to which the authority has entrusted the duty of keeping the register of blind persons in the area as to whether the claimant has in the past been regarded as a blind person. All information bearing upon the claim is placed before the local pension committee which gives a decision thereon. It is open to the pension officer or the claimant to appeal to the Minister of Health against the decision of the local pension committee. If the question of blindness arises on appeal the M. of H. arrange, where considered necessary, for the claimant's vision to be examined by a regional medical officer of the Ministry, or by an ophthalmic specialist (*k*).

It is possible for a blind person of sixty-five years of age to be in receipt of a pension granted under sect. 1 of the Blind Persons Act, 1920 (*l*), and at the same time of a contributory pension payable under the Widows', Orphans' and Old Age Contributory Pensions Act, 1925 (*m*). The former is granted subject to a “means” qualification; the latter is not subject to such a test. When a blind person holding the two pensions reaches the age of seventy, the contributory pension ceases to be payable, but the pension which was given specifically on account of blindness is continued for the rest of his life. [236]

Registration of Charities.—By sect. 3 of the Blind Persons Act, 1920, the provisions of the War Charities Act, 1916 (*n*), were re-enacted and applied with certain modifications to charities for the blind. For the purposes of the Act, the expression “charity for the blind” means any fund, institution or association (whether established before or after the commencement of the Act) having or professing to have for its object, or one of its objects, the provision of assistance in any form to blind persons or any other charitable purpose relating to blind persons, but does not include any fund, institution or association where any such

(*i*) 20 Statutes 593.

(*k*) Handbook on the Welfare of the Blind, 1934, Appendix 4.

(*l*) 20 Statutes 593.

(*m*) See s. 24 (4); 20 Statutes 616

(*n*) 2 Statutes 400 *et seq.*

object is subsidiary only to the principal purpose of the charity (sect. 3 (3)) (o). Any question whether a charity is a charity for the blind is finally determinable by the Charity Commissioners.

Regulations made by the Charity Commissioners and approved by the Minister of Health under this section of the Act were issued in September, 1920 (p).

The effect of the application of the War Charities Act to charities for the blind is to render it unlawful to make a public appeal for donations or subscriptions in money or in kind for any charity for the blind as defined in the Act, or to raise or to attempt to raise money by a bazaar, sale, entertainment or exhibition, or by any similar means for such charity unless (1) the charity is registered under the Act, and (2) the committee or other governing body of the charity have given approval in writing to such appeal or attempt to raise money (q).

By sect. 3 of the Blind Persons Act, 1920 (r), the registration authority is, as respects the City of London, the common council of the city, and elsewhere the county council or the county borough council. A registration authority may refuse to register under the Act of 1920 a charity for the blind if they are satisfied that its objects are adequately attained by a charity registered under the Act of 1916.

Under certain conditions, the registration authority may, with the consent of the Minister of Health, exempt charities for the blind from registration (s). [237]

Schemes to Promote the Welfare of Blind Persons.—Sect. 2 (t) of the Act of 1920 is framed in the widest possible terms. In pursuance of their statutory duty to promote the welfare of blind persons ordinarily resident in their area, county and county borough councils may provide and maintain or contribute towards the provision and maintenance of workshops, hostels, homes or other places for the reception of blind persons, whether within or without their area. In addition, they may, with the approval of the Minister of Health, do such other things as appear to them desirable for the purpose aforesaid.

By the same section, these councils were required within twelve months from the passing of the Act, and after detailed consideration of the requirements of blind persons of all ages and varying physical and mental capacity, to formulate for submission to the Minister of Health schemes for the welfare of blind persons (u).

A comprehensive scheme for the welfare of the blind necessarily embraces a large number of services, including provision for (i.) children under school age; (ii.) the employment of blind persons either in workshops or as home workers; (iii.) the accommodation of blind persons in hostels or homes; (iv.) a home teaching service; (v.) the care of the unemployable blind living in their own homes; and (vi.) a proper system of registration of blind persons (a).

Proposals for the education and training of children, young persons and adults, form part of the scheme of the appropriate local education

(o) 20 Statutes 596.

(p) Charities for the Blind Regulations, 1920 (S.R. & O., 1920, No. 1696). A Memorandum on the Blind Persons Act, 1920 (B. 2), was issued by the Charity Commissioners for the guidance of registration authorities. Forms of application for registration, exemption, etc., are printed as schedules to these regulations.

(q) M. of H. Circular 131, dated September 20, 1920. See also Charity Commissioners' Memorandum (B. 2), dated September, 1920.

(r) 20 Statutes 595.

(s) S.R. & O., 1920, No. 1696, Art. 16.

(t) 20 Statutes 593.

(u) S. 2 (1); 20 Statutes 593.

(a) Memorandum as to Schemes of Local Authorities (Memo. 27/B.D.).

authority, and not of the local authority under the Blind Persons Act, 1920. As a matter of convenience, however, it is usual to incorporate such proposals in schemes under the Blind Persons Act.

Usually the scheme of a council under the Blind Persons Act specifies the arrangements made for the exercise of the powers conferred upon the local authority by sect. 2 of the Act. In some areas, these powers (except the power of raising a rate or of borrowing money) are delegated to a special committee of the council formed under sect. 2 (4) of the Act; in others they are entrusted to an existing committee of the council, usually the Public Health Committee, but sometimes the Education Committee. In the latter case it is frequently the practice to appoint a sub-committee for the purpose of the Blind Persons Act on which both the Public Health and the Education Committees are represented.

Where a special committee is formed, not less than two-thirds of the members of the committee must be members of the council; subject to this condition the council may appoint as members of the committee persons specially qualified by training or experience in matters relating to the blind who are not members of the council (*b*). [238]

Certification and Registration.—As part of the necessary machinery for carrying out a scheme for the welfare of the blind, a proper system of registration is necessary (*c*). The register of the blind should cover all blind persons, no matter what their ages are, or what committee other than the Blind Persons Act Committee have an interest in them (*d*). Local authorities are asked from time to time to furnish the Minister of Health with statistics relating to the blind in their area (*e*).

In order to ensure that only persons who are blind within the meaning of the Blind Persons Act, 1920, are included in the register, care is usually taken to secure that no person is entered thereon until satisfactory medical evidence of blindness is produced (*i.e.* after examination by a medical practitioner with special experience in ophthalmology) (*f*). [239]

Definitions of Blindness.—To qualify for a pension under sect. 1 of the Blind Persons Act a person must be “so blind as to be unable to perform any work for which eyesight is essential.” This standard is substantially the same as that set out in the Regulations and Rules made by the Ministry in August, 1919, where it was prescribed that “any person in respect of whom grant is claimed shall be a person who is blind within the definition adopted by the Minister, that is to say, too blind to perform work for which eyesight is essential” (*g*).

(*b*) Blind Persons Act, 1920, s. 2 (4); 20 Statutes 594.

(*c*) Memorandum as to Schemes of Local Authorities (Memo. 27/B.D., para. 4 (i.)).

(*d*) M. of H. Memorandum 162/B.D.

(*e*) M. of H. Circular 1086, dated March 21, 1930. A form of certificate which the Minister of Health recommends for general adoption was forwarded to Local Authorities with M. of H. Circular 1353, and B. of E. Circular 1431. The form is designed to serve two purposes. Whilst its primary function is the certification of the individual, it also provides for the recording of particulars which are essential for the compilation of statistics which should ultimately be of scientific value in the prevention of blindness. The Minister and the Board of Education have authorised the Prevention of Blindness Committee, appointed by the Union of Counties Associations for the Blind, to collate such statistics, and Local Authorities are therefore asked to send copies of the certificates to the Secretary of that Committee at 66, Victoria Street, Westminster, S.W.1.

(*f*) M. of H. Circular 1086, dated March 21, 1930.

(*g*) M. of H. Welfare of the Blind Regulations and Rules made by the Ministry, August 7, 1919, Part I, Art. 10.

This definition is interpreted in Circular 681 of March 29, 1926, and in Circular 780 of April 27, 1927 (*h*); the definition and the standard of interpretation follow the recommendations contained in the report, dated July 21, 1915, of the Ophthalmological Section of the Royal Society of Medicine (*i*).

The definition of blindness given in the Blind Persons Act, 1920, differs from that contained in sect. 69 of the Education Act, 1921 (*k*). For the purposes of the Education Act a blind child is a child who is "too blind to be able to read the ordinary school books used by children." A certain number of children who are blind within the meaning of the latter Act may subsequently not be registered as blind within the meaning of the Blind Persons Act, and may therefore be precluded on the completion of a course of education or industrial training from receiving benefits under the latter Act. It is considered essential that there should be a careful co-ordination of the arrangements made for the training and employment of blind persons in order to prevent a wastage of money and of human material and effort (*l*). Circular 681 outlines the procedure agreed upon by the Minister of Health and the Board of Education for this purpose (*m*). [240]

Ordinary Residence.—The powers and duties of county and county borough councils under the Blind Persons Act apply to blind persons "ordinarily resident within their area" (sect. 2 (1)) (*n*). The Act does not define the term "ordinarily resident," although blind persons who become inmates of institutions for the blind after the commencement of the Act are to be deemed to continue to be ordinarily resident in the area in which they were ordinarily resident before they became inmates of such institutions (sect. 2 (7)) (*o*). No decision seems to have been given upon the meaning of the words "ordinarily resident," though there are several decisions thereon with reference to other Acts (*p*). [241]

Blind Children under Five Years of Age.—When blind children are found to be living under unsatisfactory home conditions, it may be necessary, in order to give them a satisfactory start in life, to arrange for their removal to suitable homes, such as the Sunshine Homes conducted by the National Institute for the Blind.

The ordinary service, under the Maternity and Child Welfare Act, 1918 (*q*), is available for blind as for sighted infants. Most schemes

(*h*) M. of H. Circular 681, March 29, 1926; M. of H. Circular 780, April 27, 1927.

(*i*) M. of H. Circulars 681, 780.

(*k*) 7 Statutes 167.

(*l*) M. of H. Circular 387, April 24, 1923.

(*m*) M. of H. Circular 681, March 29, 1926, para. 8.

(*n*) 20 Statutes 593.

(*o*) 20 Statutes 595.

(*p*) The following paragraph from a departmental Memorandum is helpful (Ninth Report of the Advisory Committee, 1930, Appendix 2. See also para. 25):

"The Minister has stated that he is advised that if a blind person moves into an area for the purpose of residing there, and of taking part in the general life of the area, he becomes "ordinarily resident" in that area; and in another case, the Minister expressed the view that, immediately the fact of such ordinary residence is established, the local authority into whose area the person has moved becomes responsible for the welfare of the person as a blind person under the Act, that is to say, the Act makes no provision for a qualifying period. On the other hand, a person does not, in the view of the Minister, become ordinarily resident in an area if he does not move into it for the purpose of residing there and taking part in the general life of the area, e.g. if he enters a hospital or mental hospital. For the meaning of the words in other Acts, see *R. v. Commanding Officer of Morn Hill Camp*, [1917] 1 K. B. 176; 16 Digest 254, 556; *Lysaght v. Inland Revenue Commissioners*, [1928] A. C. 234; Digest (Supp.); *Gout v. Cimitian*, [1922] 1 A. C. 105; Digest (Supp.); *In re Erskine* (1893), 10 T. L. R. 32; 4 Digest 27, 209.

(*q*) 11 Statutes 742 *et seq.*

under the Blind Persons Act, 1920, include provision for the care, in suitable cases, of blind children under school age at approved homes for blind children. [242]

Employment of the Blind.—(i.) *Workshops.*—The Act empowers a local authority, with the consent of the M. of H., to provide and maintain workshops for the blind, either on their own account or in combination with other authorities, or to contribute towards the cost of approved workshops conducted by voluntary agencies (sect. 2 (1)) (r). The trades usually practised in workshops include, for men—basket making, mat making, brush making, bedding, upholstery, cabinet making, cane furniture, chair seating, boot repairing, etc.; for women—hand knitting, round and flat machine knitting, light baskets, bedding, chair seating and rug making.

The recognised standards of the trade in which the employees are engaged are observed in workshops for the blind so far as they relate to rates of pay, bonus, hours of labour and holidays. Since the handicap of blindness prevents most blind persons from earning a reasonable livelihood if they are paid on a strictly commercial basis, it is usual to augment their earnings from sources other than the trading account. In many workshops an augmentation allowance is paid at a flat rate of 15s. per week. In others it is paid on a sliding scale according to which the amount of augmentation diminishes as the earnings rise.

For obvious reasons workshops for the blind cannot be conducted on an economic basis. In the case of workshops provided by voluntary agencies the losses are partly made good by contributions from local authorities based on the number of approved workshop employees accommodated in the workshop from the contributing area. [243]

(ii.) *Home Workers' Schemes.*—In the Scheme of 1919 for the payment of grants, home workers were defined as “adult blind persons who, for sufficient reasons, are employed elsewhere than in a workshop in occupations usually practised in workshops, and are attached for the purposes of care, assistance and supervision to an approved agency.”

In the light of subsequent experience, the Ministry came to the conclusion that this definition should be widened and expressed the view that it was desirable to include in a Home Workers' Scheme any occupation which satisfied the following conditions :

- (a) That the occupation should not be a mere pastime, but should be definitely on the plane of industrial effort in order that the home worker may be in a position to maintain himself out of his earnings, assisted by augmentation as in the case of an employee in a workshop.
- (b) That the occupation should be such as to enable the association which supervises the scheme to render tangible and continuing services to the home workers (s).

Schemes under the Blind Persons Act provide for arrangements for the care, assistance (including the augmentation of earnings at such rates as may from time to time be determined by the council), and supervision of home workers ordinarily resident in the area. These duties are generally entrusted to a voluntary agency and include the supply of tools, equipment and materials, assistance with supervision and technical advice and with the marketing of the goods produced. In return for

(r) 20 Statutes 593.

(s) M. of H. Circular 1086, dated March 21, 1930, para. 16.

these services, the local authority usually make an annual grant to the agency towards the expenses of their Home Workers' Scheme.

The Ministry hold that under the Blind Persons Act it is within the powers of local authorities to pay augmentation allowance to a blind person at work who is employed neither in a workshop for the blind nor under a Home Workers' Scheme (*l*). [244]

Unemployable Blind.—By reason of their disability the majority of blind persons belong to the category of "unemployable blind." The bulk of this class are blind persons living in their own homes who are not employed, and are incapable of employment in an economic sense. It is an essential part of the duty of local authorities under the Act to secure that reasonable provision is made for these persons (*a*). The provision generally made is of a two-fold nature: (*i*.) arrangements for meeting their financial needs; (*ii*.) arrangements for promoting their general social welfare.

Whilst the Blind Persons Act, 1920, did not specifically charge local authorities with the duty of providing financial assistance for the necessitous unemployable blind, a duty which was already, in cases of destitution, being carried out by the guardians, and which still is a duty of county and county borough councils under sect. 15 of the Poor Law Act, 1930 (*b*), the powers of sect. 2 of the Act of 1920 are sufficiently wide to enable them to provide such assistance if they consider such a course desirable. In their report to the Minister of Health on unemployable blind, the advisory committee recommended that all local authorities should be urged to adopt a comprehensive scheme for the financial assistance of the unemployable blind in their areas, and made detailed suggestions for the guidance of local authorities proposing to make such schemes (*c*).

An opportunity to give effect to this recommendation came with the passing of the L.G.A., 1929 (*d*). Sect. 5 of the Act requires a council in preparing their scheme for the administration of the transferred functions to have regard to the desirability of securing that as soon as circumstances permit all assistance which can lawfully be provided otherwise than by way of poor relief (*e.g.* by means of the Blind Persons Act, 1920) shall be so provided.

Local authorities were encouraged to make the widest possible arrangements under this provision and, as an example, it was suggested that it would generally be immediately practicable for them to declare that the domiciliary assistance of blind persons should be administered under the Blind Persons Act and not by way of poor relief (*e*).

Many local authorities have made such a declaration in their Schemes and have brought into operation carefully organised schemes for the provision of domiciliary assistance to necessitous blind persons. Since one effect of such a declaration is that the council's powers under the Poor Law Act, 1930, sect. 15 (*f*), of relieving destitution amongst the class of person in respect of whom the declaration is made is abrogated, such schemes must be sufficiently comprehensive to provide for the

(*l*) M. of H. Circular 1086, para. 16.

(*a*) Memorandum as to Schemes of Local Authorities, 27/B.D., para. 4 (*h*).

(*b*) 12 Statutes 978.

(*c*) Advisory Committee on the Welfare of the Blind (Report on Unemployable Blind, 1929, paras. 11, 12).

(*d*) 10 Statutes 883 *et seq.*

(*e*) M. of H. Memorandum (L.G.A.) 1.

(*f*) 12 Statutes 978.

grant of domiciliary assistance to unemployed as well as to unemployable blind persons, when destitute.

Few authorities have yet found it practicable to make a declaration in regard to the institutional treatment of blind persons.

Most of the Domiciliary Assistance Schemes of local authorities under the Blind Persons Act, 1920, provide for the grant of such financial assistance to necessitous blind persons living in their own homes as will be necessary, after taking into account existing means, to raise the standard of income to such an amount as the local authority consider appropriate for the individual case or class of case. In calculating the value of existing means, it is usual to follow the method adopted in the award of pensions under the Old Age Pensions Acts. In deciding the amount of assistance required in individual cases, local authorities frequently have regard to the possibility of obtaining help from near relatives.

In some areas the Domiciliary Assistance Scheme is administered through the committee set up under sect. 2 (4) of the Blind Persons Act or one of its sub-committees. In others it is left to a committee of the local voluntary association for the blind. Whichever course is adopted, the task is one on which it is generally agreed that the local authority and the voluntary association may co-operate with advantage to the service (g).

The Blind Persons Act does not empower a local authority, under a scheme for the assistance of unemployable blind, to deal with the relief of sighted dependants. Many authorities have, however, taken advantage of the power given to them under sect. 4 (4) of the Poor Law Act, 1930 (h), and have provided in their Scheme of Administrative Arrangements under that Act for the discharge, on behalf of and subject to the general direction and control of the public assistance committee, of the functions of that committee in regard to the relief of sighted dependants of blind persons by the committee which has been charged with the administration of the Blind Persons Act. In this way it has been found possible to place the administration of all domiciliary relief to the blind and their dependants in the hands of the same committee. [245]

Home Teaching Service.—Provision is made for the general and social welfare of the blind by means of a Home Teaching Service. The aim of the service is to secure that all the blind who need visiting should receive visits systematically, and for this purpose it is usual to employ salaried home teachers holding the home teaching certificate of the College of Teachers of the Blind. The home teachers' duties include the visiting of the blind in their own homes, the teaching of Braille or Moon, instruction in simple pastime occupations and general welfare work. [246]

L.G.A., 1929.—Fundamental changes in the system of Exchequer grants to local authorities were effected by Part VI. of the L.G.A., 1929 (i). The payment of certain Exchequer grants was discontinued after March 31, 1930. The total of these discontinued grants (based on the amount paid by the Exchequer during the year 1928—29) together with the amount of de-rating losses and a sum of new money (which was intended, *inter alia*, to provide a contribution towards the develop-

(g) Advisory Committee Report on Unemployable Blind, 1929, para. 12 (d).

(h) 12 Statutes 971.

(i) 10 Statutes 937 *et seq.*

ment of the health services, including the welfare of the blind (*j*), and which was fixed for the first three years of the scheme at £5,000,000 per annum), became payable to local authorities by the Exchequer as from April 1, 1930, in the form of consolidated grants for fixed periods in accordance with the provisions of the Act (*k*). The discontinued grants included the grants payable under the Scheme of 1919 to voluntary agencies providing services for the welfare of the blind. The Act, therefore, by sect. 102 (1) enacted that a scheme should be made by the Minister of Health before the beginning of each fixed grant period providing for the payment of specified contributions to any voluntary association which provides services for the welfare of the blind by the councils of counties and county boroughs in which are resident blind persons for whose benefit these services are provided (*l*).

The purpose of the scheme is to secure that the voluntary associations shall not be prejudiced by the operation of the new system of grants. The scheme may be altered from time to time to provide for variations in the amounts of the contributions.

The first scheme, covering the fixed grant period April, 1930, to March, 1933, was made by the Minister of Health on March 11, 1930, after consultation with the associations representing the county and county borough councils and the L.C.C. (*m*).

In fixing the amounts of the contributions prescribed in this scheme, consideration was given to (i.) the amount of the discontinued grant paid by the Ministry during the standard year (1928—29); (ii.) the amounts of the contributions made by the councils to such associations in the standard year; and (iii.) in certain cases, developments or alterations of the work of voluntary associations which had been made since the standard year (*n*).

The scheme for the second fixed grant period (*i.e.* the four financial years April, 1933, to March, 1937), came into operation on April 1, 1933 (*o*). It follows the same general lines as the corresponding scheme for the first fixed grant period, but a few alterations in the governing provisions have been made in the light of the experience gained from the working of the earlier scheme (*p*). Apart from some alterations with regard to reports and accounts, the most important alteration is that the Minister's consent will no longer be required to a reduction of a contribution specified in the First Schedule if it is made by agreement between a local authority and an association in consequence of a reduction or alteration in the services provided. In case of a dispute or difference between a local authority and an association as to the amount of any reduction, or in connection with any other matter arising out of the scheme it must be referred to the Minister for decision.

(*j*) M. of H. Circular 1086, para. 5.

(*k*) L.G.A., 1929, s. 86 (3); 10 Statutes 938. For the second fixed grant period the amount is £5,350,000 per annum (L.G. (General Exchequer Contributions) Act, 1933, s. 1; 26 Statutes 289). (l) 10 Statutes 948.

(*m*) Scheme made by the Minister of Health under s. 102 (1) of the L.G.A., 1929 (10 Statutes 948), for the payment of contributions by the councils of county and county boroughs to voluntary associations providing services for the welfare of blind persons.

The scheme made on March 11, 1930, was altered by amending schemes on October 18, 1930, and November 24, 1931.

(*n*) M. of H. Circular 1086.

(*o*) Welfare of the Blind (Contributions) Scheme, 1933 (amended by the Welfare of the Blind (Contributions) Amendment Scheme, 1934, which came into operation on 1st April, 1934).

(*p*) M. of H. Circular 1306, March 17, 1933.

The Minister attaches considerable importance to the careful rendering of an association's accounts in the manner prescribed and to their careful scrutiny by the council concerned (g).

Apart from the scheme it is open to a council under sect. 2 of the Blind Persons Act, 1920 (r), to make contributions to a voluntary association for the blind in excess of those set out in the schedules to the scheme. Some councils have followed the practice of paying voluntary associations for services rendered on the basis of the M. of H. Regulations of 1919.

As from April 1, 1930, the detailed supervision of the voluntary associations which the Minister of Health exercised through his inspectors under the scheme of 1919 ceased, and under the new scheme it became the duty of the local authorities to satisfy themselves as to the efficiency of the services to which they are required to contribute. In connection with sect. 104 of the Local Government Act, 1929 (s), the Minister makes a general survey during each fixed grant period of the various public health services carried out by the local authorities, and such survey includes a review of the arrangements in each area for the welfare of the blind. The detailed inspection of the work of the voluntary associations is, however, the responsibility of the local authorities.

In the six northern counties of England a considerable number of local authorities authorised the Northern Counties Association for the Blind to appoint a regional supervisor whose duty it is to inspect the work of the voluntary associations and to submit reports to the appropriate authorities.

The supervision of the national services (*i.e.* the production of embossed literature, and the conduct of the examination for the home teacher's certificate by the College of Teachers) in respect of which the contributions specified in the Second Schedule to the scheme are made, is carried out by the Minister of Health. [247]

Miscellaneous.—By sect. 21 of the Customs and Inland Revenue Act, 1878 (a), it was provided that a dog licence should not be necessary for a dog kept and used solely by a blind person for his or her guidance.

Papers of any kind, periodicals or books impressed in Braille or other special type for the use of the blind may be sent by post at special rates of postage (b).

Free wireless licences are available for any blind person (not being resident in a public or charitable institution or in a school) who produces a certificate issued by or under the authority of the council of the county or county borough in which he is ordinarily resident, that he is registered as a blind person in the area of the county or county borough (c).

Special travelling facilities have been granted to blind persons by a number of public transport undertakings. Blind persons travelling for business purposes accompanied by a guide enjoy the privilege of travelling on the trams, omnibuses and railways operated by the London Passenger Transport Board at a single fare for the two persons. Certain municipal undertakings grant free passes to registered blind persons on their tramways and omnibuses.

(g) M. of H. Circular 1306, March 17, 1933, II., 7.

(r) 20 Statutes 593.

(s) 10 Statutes 948.

(a) 1 Statutes 349.

(b) The Post Office Act, 1908, s. 2 (1) (d); 13 Statutes 40, and S.R. & O., 1926, No. 1468.

(c) Wireless Telegraphy (Blind Persons Facilities) Act, 1926; 19 Statutes 316.

The Ballot Act, 1872, First Schedule, r. 26 (*d*), provides that the presiding officer at a polling station shall fill up the voting paper of a blind person in recording his vote at a parliamentary election, and para. 20 of Part III. of the Second Schedule to the L.G.A., 1933, contains a similar provision as respects elections of county councillors and borough councillors. An alternative plan (*dd*) of allowing a blind person to take to the polling booth a relation over twenty-one years of age, or another person who is entitled to vote at the election of county or borough councillors which is being held, by whom the voting paper is to be filled up, is allowed by para. 21 of the Schedule above mentioned. These provisions will presumably be applied also to elections of district councillors by the rules to be made under sect. 40 of the L.G.A., 1933 (*e*). [248]

Prevention of Blindness.—Apart from the economic loss which the blind and their dependants suffer through disability, the provision of social services for the blind is a considerable burden upon the community. The total number of registered blind persons in England and Wales on March 31, 1932, was 62,079, and the total net expenditure by local authorities out of rates on work for the welfare of the blind amounted to £778,339 in 1930—31. To this sum must be added the cost of granting old age pensions to blind persons at an earlier age than to the other pensioners, and the comparatively large sums subscribed by the charitable public for objects connected with the welfare of the blind.

However necessary it may be to take steps to ameliorate the condition of those unfortunate individuals who suffer from blindness, from all points of view, whether economic, social or philanthropic, the prevention of blindness is an important duty, and one upon which an expenditure of public funds is highly desirable.

The Blind Persons Act, 1920, does not authorise the provision by a local authority of treatment to prevent a sighted person from becoming blind or of glasses for sighted persons. The benefits of that Act are limited to those who are blind within the meaning of the Act. The councils of counties, boroughs and districts are, however, empowered by the P.H.A., 1925, s. 66 (1), to make such arrangements as they may think desirable to assist the prevention of blindness, subject to the consent of the M. of H. (*f*). Their powers include the treatment of persons ordinarily resident within their area who are suffering from any disease of, or injury to, the eyes. [249]

London.—The L.C.C. in pursuance of the Blind Persons Act, 1920, has formulated a scheme for the welfare of blind persons in the County of London.

Under the scheme the council arranges with metropolitan borough councils for any necessary provision for blind children up to the age of 5 years to be made by the child welfare centres in the several metropolitan boroughs, and for home visiting in such cases to be carried out by the health visitors acting in co-operation with the home teachers for the blind. Where the home conditions are unsuitable for a blind child, arrangements are made for its reception into an approved institution, but, save in very exceptional circumstances, a blind child is not removed from its own home. School attendance officers and inspectors of midwives assist the metropolitan borough councils by reporting any

(*d*) 7 Statutes 441.

(*dd*) Following the Blind Voters Act, 1933, s. 1 (1); 26 Statutes 133.

(*e*) See L.G.A., 1933, s. 40 (2); 26 Statutes 325.

(*f*) 13 Statutes 1144.

cases which come to their knowledge of blind or partially blind children.

The council does not itself provide or maintain institutions for the training or employment of blind persons over 16 years of age, or hostels or homes for their accommodation, but for the purpose of securing adequate provision of such facilities utilises, and where necessary in approved cases assists, charitable and other associations and institutions for the welfare of the blind. The council supervises and, so far as is practicable, co-ordinates the work of such associations and institutions.

The council also arranges, as far as possible, for the employment of suitable and approved blind persons in workshops for the blind or elsewhere, and generally secures the welfare and interests of the blind persons concerned.

The council's scheme provides for the care, assistance and supervision of approved "home workers" (viz. those adult persons who are employed elsewhere than in workshops for the blind in occupations usually practised in such workshops or taught in recognised training institutions or in other approved occupations), and generally secures the welfare and interests of the blind persons concerned.

In some instances the council makes arrangements for the payments in augmentation of the wages or earnings of approved workers employed in a workshop for the blind, or under a home worker's scheme, or elsewhere, on such a scale as may be approved.

The council also co-ordinates, regulates and, if necessary, assists the work of voluntary agencies in connection with home teaching, home visiting and such other services, not specified elsewhere in the scheme, as the agencies may render for the benefit of blind persons, and takes such action as may be considered desirable for the improvement or extension of such services. The appointment of home teachers is subject to the approval of the council.

The council provides such domiciliary assistance as may be considered appropriate to any blind persons, who in accordance with the declaration made in regard to the domiciliary assistance of blind persons in the administrative scheme of the council under Part I. of the L.G.A., 1929, must be dealt with under the Blind Persons Act, 1920.

A central council is maintained consisting of representatives of charitable and other associations and institutions for the blind, of representatives of the council and of such other persons (if any) as the council may from time to time deem it desirable to include. This council is available for advisory or such other purposes as may be necessary to assist the county council, and to secure co-operation between the several societies and associations and between such societies and associations and the council.

A register is kept of all blind persons resident within the County of London. No person's name is finally entered on the register until he has been examined and certified to be blind within the meaning of the Blind Persons Act, 1920, by a medical practitioner with special experience in ophthalmology. [250]

BLOCK GRANTS

See GENERAL EXCHEQUER GRANTS.

BOARD OF CONTROL

	PAGE		PAGE
INTRODUCTORY - - - -	121	(5) Approval of Premises and Admission of Patients to certain forms of care -	126
I. OUTLINE OF HISTORY AND PRESENT CONSTITUTION - -	121		
II. FUNCTIONS OF THE BOARD OF CONTROL UNDER THE LUNACY AND MENTAL TREATMENT ACTS - -	123	III. FUNCTIONS OF THE BOARD OF CONTROL UNDER THE MENTAL DEFICIENCY ACTS -	127
(1) Examination of Documents	123	(1) Examination of Documents	128
(a) On Admission - -	123	(a) On Admission - -	128
(b) Week-end, Month-end and Continuation Reports - -	124	(b) Continuation Reports	128
(c) Correspondence - -	124	(2) Visitation - - - -	128
(2) Visitation - - - -	124	(3) Board's Power of Discharge	128
(3) Board's Power of Discharge	125	(4) Care of Patients - - -	129
(4) Care of Patients - - -	125	(5) Approval of Premises - -	129
		(6) State Institutions - - -	129
		LONDON - - - - -	129

See also titles :

GOVERNMENT CONTROL ; LICENSED HOUSES AND HOSPITALS ; MEDICAL SUPERINTENDENT ; MENTAL DEFECTIVES ;	MENTAL DISORDER AND MENTAL DEFICIENCY ; MENTAL HOSPITALS ; PERSONS OF UNSOUND MIND.
--	---

INTRODUCTORY

The subject is dealt with under the following Acts :

- Lunacy Act, 1890 (a) ;
- Lunacy Act, 1891 (b) ;
- Mental Treatment Act, 1930 (c) ;
- Mental Deficiency Act, 1913 (d) ;
- Mental Deficiency (Amendment) Act, 1925 (e) ;
- Mental Deficiency Act, 1927 (f) ;

and the following Statutory Rules :

- Mental Deficiency Act Provisional Regulations, 1914 (g) ;
- Mental Treatment Rules, 1930 (h). [251]

I. OUTLINE OF HISTORY AND PRESENT CONSTITUTION

(1) The Lunacy Commission, of which the Board of Control are the legal successors, was appointed under the Lunacy Act of 1845, as a permanent Government commission to exercise general supervision over

(a) 11 Statutes 17 *et seq.*

(c) 23 Statutes 154 *et seq.*

(e) *Ibid.*, 199.

(g) These regulations were not printed as S.R. & O., but as Parliamentary Papers of 1914, Nos. 178, 207.

(h) S.R. & O., 1930, No. 1083 ; 23 Statutes 178.

(b) *Ibid.*, 144 *et seq.*

(d) 11 Statutes 160 *et seq.*

(f) *Ibid.*, 200 *et seq.*

the lunacy administration. Their constitution and functions were further regulated by the Lunacy Act, 1890 (*i*). In 1913, however, the commission was reconstituted as the Board of Control, and to its functions was added the duty of supervising the administration of the Mental Deficiency Service established by the Mental Deficiency Act, 1913 (*j*). Finally, in 1930, the Mental Treatment Act effected far-reaching modifications in the constitution of the Board, and still further enlarged its functions by entrusting to the Board certain powers and duties in connection with the extended facilities for early mental treatment provided by the Act. [252]

(2) The present constitution of the Board and its organisation is as follows (*k*):

- (a) The Board consists of five members, styled Senior Commissioners. Of the members other than the chairman, one at least must be a legal commissioner; two must be medical commissioners; and one at least must be a woman. The members of the Board are appointed by the King on the recommendation, as regards the legal senior commissioners, of the Lord Chancellor, and, as regards the others, of the Minister of Health. The legal senior commissioner must be, or have been, a practising barrister or solicitor of at least five years' standing, and the medical senior commissioners must be registered medical practitioners of at least five years' standing. The Minister of Health appoints one of the senior commissioners to be chairman. All are paid servants of the Crown and hold office during His Majesty's pleasure with the exception of two commissioners, who had been appointed under the Act of 1913, and whose tenure of office is saved by sect. 11 (6) (ii.) of the Mental Treatment Act, 1930 (*l*).
- (b) The Board are assisted by a secretary, an administrative staff, recruited through the ordinary civil service channels, and an architectural staff.
- (c) For the purposes of the work of visitation and inspection, the Board are assisted by a number of commissioners and inspectors who are appointed by the Board subject to the approval of the Minister of Health. The commissioners, some of whom must be women, have medical or legal qualifications. By sect. 13 of the Mental Treatment Act, 1930 (*m*), the Board have a discretion to direct that any visitation, inspection or act, required or authorised to be carried out by the Board or by a commissioner or any number of commissioners, may be carried out by one or more commissioners or by one or more inspectors. [253]

(3) The estimates of the Board are presented to Parliament by the Minister of Health, who is answerable to Parliament for the general policy of the Board. In this connection, it may be observed that most of the powers assigned to the Secretary of State by the Lunacy Act of 1890 (*n*), and the Mental Deficiency Act of 1913 (*o*), were transferred to the Minister of Health by the M. of H. (Lunacy and Mental Deficiency Transfer of Powers) Order, 1920 (S.R. & O., 1920, No. 809). Again,

(*i*) 11 Statutes 17 *et seq.*

(*k*) Mental Treatment Act, 1930, s. 11; 23 Statutes 165.

(*l*) *Ibid.*, 166.

(*n*) 11 Statutes 17 *et seq.*

(*j*) *Ibid.*, 160 *et seq.*

(*m*) *Ibid.*, 167.

(*o*) *Ibid.*, 160 *et seq.*

by sect. 14 of the Mental Treatment Act, 1930 (*p*), many of the powers so vested in the Minister were transferred to the Board.

Under sect. 162 of the Lunacy Act, 1890 (*q*), the Board are required to make reports to the Lord Chancellor, and under sect. 25 (1) (*g*) of the Mental Deficiency Act, 1913 (*r*), the Board are required to prepare an Annual Report, which is presented to Parliament. [254]

(4) Certain powers are reserved to the Judge in Lunacy, *e.g.* in regard to inquisitions under Part III. of the Lunacy Act, 1890 (*s*), and in regard to the administration of the estate of mentally afflicted persons, under Part IV. of the Act (*t*), as extended by sect. 5 (16) of the Mental Treatment Act, 1930 (*u*), and sect. 64 of the Mental Deficiency Act, 1913 (*a*). Apart from these provisions the duty of supervision of the administration of the Lunacy and Mental Treatment Acts and Mental Deficiency Acts rests upon the Board of Control.

It can be said that the main issues to which the supervision exercised by the Board is directed are :

- (a) Whether the requirements of the statutes have been complied with on the initial admission of a patient ; whether his continued detention is necessary ; or whether he should be discharged.
- (b) Whether the provision made for the care and treatment of the patient is adequate.

These safeguards are made operative by three principal means :

- (i.) The examination of the documents.
- (ii.) Visitation.
- (iii.) The approval of premises.

A more detailed description of the Board's principal functions follows : but it is not an exhaustive statement of all their statutory powers and duties. [255]

II. FUNCTIONS OF THE BOARD OF CONTROL UNDER THE LUNACY AND MENTAL TREATMENT ACTS

N.B.—*Sections mentioned are sections of the Lunacy Act, 1890, unless otherwise stated. Rules mentioned are the Mental Treatment Rules, 1930.*

The powers and duties of the Board are derived mainly from the provisions in the Statutes and from the Rules which the Board are empowered to make under sect. 338 (1) of the Lunacy Act, 1890 (*b*), as extended by sect. 15 of the Mental Treatment Act, 1930 (*c*). These Rules were made in 1930 (*d*). [256]

(1) **Examination of documents.** (a) *On admission.*—On the admission of any patient—voluntary, temporary, or certified—the clerk of an institution or the person-in-charge is required to send to the Board, before the expiration of the second day, a notice of the patient's admission, together with copies of the order (if any) upon which he was admitted and the medical certificates or recommendations (Rules 70,

(*p*) 23 Statutes 168.

(*r*) *Ibid.*, 176.

(*t*) *Ibid.*, 56 *et seq.*

(*a*) 11 Statutes 192.

(*c*) 23 Statutes 168.

(*d*) S.R. & O., 1930, No. 1083 ; 23 Statutes 178 *et seq.*

(*q*) 11 Statutes 75.

(*s*) *Ibid.*, 52 *et seq.*

(*u*) 23 Statutes 160.

(*b*) *Ibid.*, 129.

96, and 111). Under sect. 34 (*e*), if any order or certificate for the reception of a patient is found to be in any respect incorrect or defective, it may be amended within fourteen days after reception either with the Board's sanction or at their order. Failing obedience to such an order, they may make an order for the patient's discharge. [257]

(b) *Week-end, Month-end and Continuation Reports.*

- (i.) In the case of every temporary or certified patient, a medical statement on the condition of the patient must be furnished to the Board after the expiration of the second day and before the end of the seventh day after admission (Rules 71, 98 and 112).
- (ii.) In the case of a certified private patient, a report must be sent to the Board within one month after reception, under sect. 39 (*f*).
- (iii.) In the case of all certified patients, the continuance of the order for detention depends upon the submission to the Board of continuation reports prescribed by sect. 38 (*g*) as amended by sect. 7 of the Lunacy Act, 1891 (*h*), which must be sent to the Board at the end of the first and of the second years after admission, then at the end of two years thereafter, then after three years, and thereafter at the end of each successive period of five years.

In the case of temporary patients, the period of detention is limited to a maximum of six months unless it is extended for a further period by the Board under sect. 5 (13) of the Mental Treatment Act, 1930 (*i*). [258]

(c) *Correspondence.*—By sect. 41 certified patients and by Rule 33 temporary patients are entitled to have all letters addressed by them to the Board forwarded unopened. [259]

(2) *Visitation.*—The Board are required to visit, through their commissioners, every public mental hospital at least once a year (sect. 187 (1)) (*k*), and to inquire into the several matters specified in that section. They are required to visit every registered hospital at least once a year, every licensed house in the metropolitan area at least six times a year, and every other licensed house at least twice a year (sect. 191) (*l*).

Every certified single patient must be visited at least once a year (sect. 198) (*m*). By Rules 51, 53 and 57, the Board are required to visit at least once a year every hospital, nursing home, or place where voluntary or temporary patients are received under the Mental Treatment Act. In addition, the Board may visit any of these places at any time, and are empowered to require the person-in-charge to produce the patient and also to produce any of the statutory registers and records which the Rules require to be kept in regard to a patient. Public assistance institutions containing persons of unsound mind and municipal hospitals approved under sect. 19 of the Mental Treatment Act, 1930 (*n*), are visited in accordance with sect. 203 (*o*). [260]

(*e*) 11 Statutes 32.

(*g*) *Ibid.*, 33.

(*i*) 23 Statutes 160.

(*l*) *Ibid.*, 84.

(*n*) 23 Statutes 171.

(*f*) *Ibid.*, 35.

(*h*) *Ibid.*, 33, 146.

(*k*) 11 Statutes 82.

(*m*) *Ibid.*, 87.

(*o*) 11 Statutes 88.

(3) **Board's Power of Discharge.**—The Board's power of discharge under the Lunacy and Mental Treatment Acts is limited to the following cases :

- (a) If the reception documents are not amended to their satisfaction (sect. 34 (2)) (*p*). This applies to certified rate-aided and certified private patients wherever detained.
- (b) If the Board are dissatisfied with the continuation report on a certified patient in a registered hospital or licensed house, or in single care (sect. 38 (6) (*a*)) (*q*).
- (c) If, after considering the month-end report on a certified private patient they are of opinion that the patient should be discharged (sect. 39 (7) (9)) (*r*).
- (d) If there is no person qualified or willing to direct the discharge of a certified private patient (sect. 72 (3)) (*s*), or of a temporary patient (Rule 39 (3)).

In addition, the Board have the following powers which are not infrequently used :

- (e) Two commissioners (one legal and one medical) may order the discharge of a certified patient who appears to have been detained without sufficient cause in any registered hospital or licensed house or in single care (sects. 75, 76) (*t*).
- (f) The Board may make an order for the examination of any certified or temporary patient by two medical practitioners under sect. 49 and Rule 35, and if the examining practitioners certify in the terms specified in the section and Rule, the Board have a discretion to discharge the patient if they think fit.
- (g) Under the Mental Treatment Act, 1930, the Board may at any time direct the discharge of a voluntary patient (sect. 3 (2)) (*u*), or a temporary patient (sect. 5 (14)) (*a*). [261]

(4) **Care of Patients.**—The foregoing provisions which empower the Board to pay frequent visits to patients under care, and the records which have to be kept and the reports made upon the mental and physical condition of patients, enable the Board to exercise a general surveillance over the well-being of patients treated under the Lunacy and Mental Treatment Acts. In addition, there are certain further provisions designed to bring to the Board's notice any incidents of importance relating to the treatment of patients and, in particular, the following may be mentioned :

There is a special provision in sect. 40 (*b*), as extended by Rule 32, by which the Board regulate in detail the nature of the mechanical restraint permissible for certified or temporary patients. The Rules also provide (76, 99 and 115) for a record to be made of the hours during which any such patient is kept in seclusion. Further, the death of every patient must be notified to the Board with full particulars, in accordance with the provisions of Rules 85, 106 and 122.

The Board have power, which they not infrequently exercise, under sect. 332 (*c*) to hold an inquiry on oath respecting any matters which they are by the Acts authorised to inquire into.

A further safeguard enforced by the Board arises out of the pro-

- (*p*) 11 Statutes 32.
- (*r*) *Ibid.*, 35, 36.
- (*t*) *Ibid.*, 47, 48.
- (*a*) *Ibid.*, 160.
- (*c*) *Ibid.*, 127.

- (*q*) *Ibid.*, 34.
- (*s*) *Ibid.*, 47.
- (*u*) 23 Statutes 156.
- (*b*) 11 Statutes 36.

visions of sect. 315 (*d*) which makes it a misdemeanour for any person to receive, or for payment take charge of, any person of unsound mind or alleged to be of unsound mind except under the provisions of the Act. In all cases in which it appears to the Board that any person is being kept in illegal charge, they take steps to see that the provisions of sect. 315 (*d*) are made effective.

Under sect. 206 (*e*), the Board have power to call for reports regarding persons in private families or charitable establishments who appear to be, without order and certificates, detained or treated as persons of unsound mind by any person not receiving payment; and the commissioners may visit such patients at any time.

Further, an order by the Lord Chancellor or a Secretary of State under sect. 205 (*f*) may empower a commissioner of the Board to visit and examine any person of unsound mind or alleged to be of unsound mind and to inspect any place in which such a person is detained. [262]

(5) Approval of Premises and the admission of Patients to certain forms of care.—The approval of the Board of Control is required in the following circumstances :

- (a) Under sect. 254 (2) (*g*), as amended by sect. 16 of the Lunacy Act, 1891 (*h*), and sect. 14 of the Mental Treatment Act, 1930 (*i*), plans and contracts for the purchase of land and buildings and for the erection, restoration and enlargement of buildings for a public mental hospital by a local authority require the approval of the Board.

- (b) One of the duties of the Board of Control is to determine any question which may arise with respect to expenses incurred by the common council of the City of London in the provision, equipment and maintenance of buildings or otherwise under sect. 10 (4) of the Mental Treatment Act, 1930 (*k*).

The L.C.C. has one representative on the advisory committee appointed by the Board of Control to advise the Board in connection with the co-ordinating powers vested in the Board by sect. 6 (3) (*d*) of the Mental Treatment Act, 1930 (*l*), which empowers local authorities to undertake research.

- (c) Registered hospitals require a certificate of registration from the Board under sect. 231 (*m*), as amended by sect. 14 of the Mental Treatment Act, 1930 (*n*); and any alterations or additions to such hospitals require the previous consent of the Board (Rule 132).

- (d) The previous approval of the Board is required before any hospital, nursing home, or place, not being a mental hospital, may be used for the reception of a voluntary patient under sect. 1 (1) of the Mental Treatment Act, 1930 (*o*), and before any institution, hospital, or nursing home, not being an institution maintained by a local authority or a registered hospital, can be used for the reception of temporary patients under sect. 5 (1) (*p*) of that Act.

(*d*) 11 Statutes 122.

(*f*) *Ibid.*, 88.

(*h*) *Ibid.*, 103, 147.

(*k*) *Ibid.*, 164.

(*m*) 11 Statutes 96.

(*o*) *Ibid.*, 154.

(*e*) *Ibid.*, 89.

(*g*) *Ibid.*, 103.

(*i*) 23 Statutes 168.

(*l*) *Ibid.*, 162.

(*n*) 23 Statutes 168.

(*p*) *Ibid.*, 157.

- (e) As regards patients received into single care, the approval of the Board is required as follows :
- (i.) Before more than one single certified patient can be received under sect. 46 (*q*).
 - (ii.) A voluntary patient may be received into care as a single patient by any person approved by the Board under sect. 1 (1) of the Mental Treatment Act, 1930 (*r*).
 - (iii.) A single temporary patient can only be received into single care with the consent of the Board under sect. 5 (1) (iv.) of the Mental Treatment Act, 1930 (*s*).
- (f) Sect. 14 of the Act of 1930 (*ss*) transferred to the Board the powers of approval of the Rules for the government of a public mental hospital under sect. 275 (1) (*t*); and of the Regulations governing a registered hospital under sect. 281 (5) (*u*). The Board are empowered to make Regulations for the government of licensed houses under sect. 226 (*v*).
- (g) The Board may under sect. 59 (*a*) direct the removal of a certified patient from an institution to any other institution, or of a certified single patient from the charge of any person to the charge of any other person or to an institution. For analogous powers as to temporary patients, see Rule 8. [263]

III. FUNCTIONS OF THE BOARD OF CONTROL UNDER THE MENTAL DEFICIENCY ACTS

N.B.—*Sections mentioned are sections of the Mental Deficiency Act, 1913, unless otherwise stated. Rules mentioned are the Mental Deficiency Rules, 1930.*

The powers and duties of the Board under the Mental Deficiency Acts, as under the Lunacy and Mental Treatment Acts, are derived from provisions in the Statutes and from Rules, but the Rules in the case of mental deficiency are the Provisional Regulations made by the Home Secretary in 1914 under sects. 20, 30 and 41 of the Mental Deficiency Act, 1913 (*b*).

Unlike the Lunacy and Mental Treatment Acts, however, the Mental Deficiency Act, 1913 (*c*), contains a comprehensive statement in general terms of the powers and duties of the Board of Control in relation to the Mental Deficiency Service. Sect. 25 (*d*) of the Act provides that, subject to Regulations made by the Secretary of State, the Board of Control shall—

- (a) Exercise general supervision, protection and control over defectives.
- (b) Supervise the administration by local authorities of their powers and duties under the Act.

(*q*) 11 Statutes 38.

(*s*) *Ibid.*, 157.

(*t*) 11 Statutes 110.

(*v*) *Ibid.*, 95.

(*b*) *Ibid.*, 173, 178, 184.

(*d*) *Ibid.*, 175.

(*r*) 23 Statutes 154.

(*ss*) *Ibid.*, 168.

(*u*) *Ibid.*, 97.

(*a*) *Ibid.*, 44.

(*c*) *Ibid.*, 160 *et seq.*

- (c) Certify, approve, supervise and inspect institutions, houses and homes for defectives.
- (d) Visit defectives in institutions, certified houses, or approved homes, or under guardianship.
- (e) Provide and maintain institutions for defectives of dangerous or violent propensities.
- (f) Take such steps as may be necessary for ensuring suitable treatment of cases of mental deficiency.

The general supervision, as under the Lunacy and Mental Treatment Acts, is exercised through three principal means, namely, the examination of documents, visitation and approval of premises. [264]

(1) **Examination of Documents.** (a) *On Admission.*—Within seven days of the admission of a defective, the superintendent of the institution, house or home, or the guardian, is required to send to the Board a notice of admission with a medical statement (signed in the case of an institution by the medical officer and in the case of a patient under guardianship by the duly appointed medical attendant), and, in the case of an institution, house or guardian, copies of the order or authority on which the patient was admitted and of the documents on which the order or authority was based (Rules 94, 208). If the order or any of the documents is considered defective, the Board may require them to be amended or supplemented within fourteen days, or such longer period as the Board may allow, failing which they may discharge the patient (Rule 41).

(b) *Continuation Reports.*—The continuation of orders for the detention of mental defectives is determined by the Board of Control under sect. 11 (e), and they have the sole power to discharge a defective from the order, except in the case of a defective reaching the age of twenty-one when the visitors appointed under the Act have concurrently the power to discharge. [265]

(2) **Visitation.**—The Board have the duty under sect. 25 (2) (f) of the Act to visit every certified institution, certified house and approved home, through one or more commissioners, at least once in each year, and either through themselves or their inspectors on one additional occasion in each year, and every defective under guardianship at least twice in every year. [266]

(3) **Board's Power of Discharge.**—The Board's powers in relation to the discharge of mental defectives may be summarised as follows :

- (a) Upon receipt of the special reports and certificates under sect. 11 (g), the Board may decide not to continue the order for detention.
- (b) Under sect. 25 (2) (h) the Board may at any time discharge any patient detained under order in a certified institution or certified house or under guardianship.
- (c) When a patient has been placed in an institution or under guardianship by his parent or guardian under sect. 3 (i), the parent or guardian can withdraw the patient under sect. 12 (k), subject to the power of the Board to veto the discharge of the patient from detention. [267]

(e) 11 Statutes 168.

(h) *Ibid.*, 176.

(f) *Ibid.*, 176.

(i) *Ibid.*, 162.

(g) *Ibid.*, 168.

(k) *Ibid.*, 169.

(4) **Care of Patients.**—Under sect. 41 of the Act (*l*), Regulations may be made to apply certain provisions of the Lunacy Acts to defectives. A number of the safeguards which the Board exercise in relation to patients detained under the Lunacy and Mental Treatment Acts also apply to mental defectives. In particular, the following may be mentioned :

The Provisions in regard to Correspondence (Rule 98).

Mechanical Restraint (Rule 85).

Seclusion (Rule 86).

Notice of Death (Rules 95, 97). [268]

(5) **Approval of Premises.**—The following are the principal provisions under which all places where defectives reside come under the purview of the Board of Control :

(a) Under sect. 36 (*m*), the Board are empowered to certify institutions for mental defectives. When such institutions are provided by local authorities, the plans require the approval of the Minister of Health under sect. 38 (*n*), and for this purpose must, in the first instance, be submitted to the Board of Control (Rule 20).

(b) Certified houses and approved homes require the Board's certificate or approval under sects. 49 and 50 (*o*) respectively.

(c) The Board are empowered by sect. 37 (*p*) to approve, for the reception of mental defectives, any poor law premises, subject to the consent of the Minister of Health.

(d) Under sect. 51 (*g*), the consent of the Board is required before more than one defective can be received under care in any premises other than an institution, certified house, or approved home.

(e) When patients are under guardianship notice of any change of address must be sent to the Board (Rule 205). [269]

(6) **State Institutions.**—The Board of Control have exercised the power conferred upon them by sect. 35 (*r*), and have established a State institution for defectives of dangerous or violent propensities. This institution now has two branches, one at Rampton, near Retford, Notts, and the other at Moss Side, near Liverpool. [270]

LONDON

Licensed houses for the reception of persons of unsound mind in London or near to it (*s*) are licensed by the Board (*t*) instead of by the justices, and additions or alterations to any licensed house require the previous consent of the Board (Rule 130). (See also *ante*, p. 126, paragraph 5 (*b*)). [271]

(*l*) 11 Statutes 184.

(*m*) *Ibid.*, 182.

(*n*) Amended by S.R. & O., 1920, No. 809, *ibid.*

(*o*) *Ibid.*, 187, 188.

(*p*) *Ibid.*, 182.

(*q*) *Ibid.*, 189.

(*r*) *Ibid.*, 181.

(*s*) For places near, see Lunacy Act, 1890, 3rd Sched. ; 11 Statutes 143.

(*t*) Act of 1890, s. 208 ; *ibid.*, 91.

BOARD OF EDUCATION

	PAGE		PAGE
MEMBERS OF THE BOARD OF		Authorities and Managers	
EDUCATION - - - -	130	of Non-Provided Schools -	135
PROCEEDINGS OF THE BOARD OF		(3) Sundry Instances - -	135
EDUCATION - - - -	131	PUBLIC INQUIRIES BY THE BOARD	
DUTIES AND POWERS OF THE		OF EDUCATION - - -	136
BOARD OF EDUCATION - -	131	(i.) Endowment of Non-Pro-	
THE CONSULTATIVE COMMITTEE -	131	vided Schools - - -	136
NON-STATUTORY BODIES - -	132	(ii.) Power to Enforce the Duties	
THE ADULT EDUCATION COM-		of a Local Education	
MITTEE - - - -	132	Authority - - -	136
THE JUVENILE ORGANISATIONS		(iii.) Grouping of Non-Provided	
COMMITTEE - - - -	132	Schools of the same De-	
THE SECONDARY SCHOOLS EX-		nomination - - -	136
AMINATIONS COUNCIL - -	133	(iv.) Approval of Bye-Laws -	137
THE BURNHAM COMMITTEE - -	133	(v.) Compulsory Acquisition of	
THE ANNUAL REPORT - -	134	Land - - - -	137
INSPECTION - - - -	134	(vi.) Whether a New School is	
DETERMINATION OF QUESTIONS		Necessary - - -	137
AND DISPUTES - - -	134	FUNCTIONS THE BOARD DO NOT	
(1) General Principles - -	134	PERFORM - - - -	137
(2) Between Local Education		EDUCATIONAL ENDOWMENTS -	138
		GENERAL POLICY IN REGARD TO	
		LOCAL EDUCATION AUTHORITIES	138

See also titles :

CONSTITUTIONAL LAW ;
EDUCATION ;
EDUCATION FINANCE ;
EDUCATION SPECIAL SERVICES ;
GOVERNMENT CONTROL ;

GOVERNMENT AND LOCAL INSPECTORS ;
INQUIRIES ;
GRANTS ;
LOCAL GOVERNMENT ;
SECRETARY OF STATE.

The Board of Education, which was established on April 1, 1900 (*a*), is charged with the superintendence of matters relating to education in England and Wales (*b*). [272]

Members of the Board of Education.—The Board consists of a President, the Lord President of the Council (unless he is appointed President of the Board), the principal Secretaries of State, the First Commissioner of the Treasury, and the Chancellor of the Exchequer (*c*). The President of the Board is appointed by the Crown, and holds office during His Majesty's pleasure (*d*). The Board do not meet and the President is responsible for the due discharge of the functions of the Board. [273]

(*a*) By the Board of Education Act, 1899 ; 7 Statutes 124 *et seq.*

(*b*) *Ibid.*, s. 1 (1) ; 7 Statutes 124.

(*c*) *Ibid.*, s. 1 (2) ; 7 Statutes 124.

(*d*) *Ibid.*, s. 1 (4) ; 7 Statutes 124.

Proceedings of the Board of Education.—The Board of Education may sue and be sued and may for all purposes be described by that name (*e*). Every document purporting to be an instrument issued by the Board of Education, and (1) sealed with the seal of the Board authenticated by the signature of the President or some member of the Board, or of a secretary, or of some person authorised to act on behalf of a secretary, or (2) signed by a secretary or by a person authorised to act on behalf of a secretary, is to be received in evidence and to be deemed to be such an instrument without further proof, unless the contrary is shown (*f*). [274]

Duties and Powers of the Board of Education.—By the Board of Education Act, 1899 (*g*), the Board was charged with the superintendence of matters relating to education in England and Wales, and the Education Acts of 1902 and 1918 (*h*) did not formally redefine its functions. But the Act of 1902, through the creation of local education authorities, modified the character of its administration. One of its dominant functions is to deal with finance, for the power to withhold or reduce grants in aid of education is one of its most effective methods of enforcing its requirements (*i*).

The Board are bound to make regulations for the payment of grants to local education authorities out of moneys provided by Parliament, and in these regulations they may stipulate the conditions and limitations compliance with which is essential before grant is paid (*k*). [275]

The Consultative Committee.—The Act of 1899 (*l*) provided for the establishment of a consultative committee consisting, as to not less than two-thirds, of persons qualified to represent the views of universities and other bodies interested in education. Such a committee was constituted in 1900 by Order in Council. It was enlarged in 1907, and reconstituted in 1920 by a further Order in Council (*m*).

Now, it has twenty-one members appointed by the President of the Board normally for six years, and in making appointments the President is to have regard to the above requirements regarding persons qualified to represent the views of the universities, etc. Provision is made for the retirement of its members by rotation. Its present function is the general one of advising the Board on any matters referred to the committee by the Board (*n*).

The officers of the Board of Education do not actually confer with the consultative committee, but they appear before it as witnesses. Its reports are published automatically, and are submitted to the Board in print. No responsibility is taken by the Board for the contents of these reports, but their contents and recommendations play an important part in the formulation of the Board's policy.

There can be no doubt that the consultative committee has fully justified its existence, for many of its admirable reports have been

(*e*) Board of Education Act, 1899, s. 7 (1); 7 Statutes 125.

(*f*) *Ibid.*, s. 7 (3); 7 Statutes 125.

(*g*) 7 Statutes 124 *et seq.*

(*h*) *Ibid.*, 128.

(*i*) See, *e.g.* Education Act, 1921, s. 118 (4); 7 Statutes 194.

(*k*) *Ibid.*, s. 118 (1); 7 Statutes 193.

(*l*) S. 4, repealed by Education Act, 1921.

(*m*) S.R. & O., 1920, No. 1582.

(*n*) Education Act, 1921, s. 2; 7 Statutes 131.

followed by important administrative action which has enriched and developed the public service of education.

Among the reports that it has issued, the following deserve special note: "Infant and Nursery Schools" (1938); "The Primary School" (1931); "Books in Public Elementary Schools" (1928); "The Education of the Adolescent (Hadow Report)" (1926); "Psychological Tests of Educable Capacity" (1924); "Differentiation of Curricula between the Sexes in Secondary Schools" (1922). [276]

Non-Statutory Bodies.—In addition to the consultative committee—which is a statutory committee—there are non-statutory bodies which are doing valuable work. These include the Adult Education Committee, the Juvenile Organisations Committee, the Secondary Schools Examinations Council and the Burnham Committee, which will now be considered in some detail. [277]

The Adult Education Committee.—The Adult Education Committee was established in 1921 to promote the development of liberal education for adults, and in particular to bring together national organisations concerned with the provision of adult education. It was also its purpose to further the establishment of local voluntary organisations with the same end in view, and to arrange for co-operation with local education authorities. It was in addition to advise the Board on any matter that might be referred to it by the Board (o).

Every university, the principal voluntary organisations and the three associations of local education authorities nominate representatives for appointment by the President of the Board of Education, who also makes several personal appointments.

Among the work of this committee is a scheme for the instruction of adult inmates of prisons by means of classes taken by voluntary teachers.

His Majesty's Stationery Office has published the papers which the committee has prepared, among the most important of which are: "Report on Local Co-operation between Universities, Local Education Authorities and Voluntary Bodies"; "Report on the Recruitment, Training and Remuneration of Tutors"; "Development of Adult Education in Rural Areas"; "Development of Adult Education for Women"; "British Music"; "The Drama in Adult Education"; "Full Time Studies"; "Natural Science in Adult Education"; "Adult Education and the Local Authority."

Their latest report deals with the problem of the place of local education authorities in adult education, and is entitled "Adult Education and the Local Authority." [278]

The Juvenile Organisations Committee (p).—This body is rather more than an advisory committee, for it is an active agency for stimulating and organising voluntary effort to supplement the ordinary public elementary school education. It arose out of the establishment of a central committee by the Home Office in 1916 to assist in dealing with the war problem of juvenile delinquency. In order to assist in the work of prevention, the services of voluntary bodies and organisations such as boy scouts, boys' brigades, etc., were utilised, and they were found to be most helpful.

(o) See "The Board of Education," by Sir L. A. Selby-Bigge (Putnam).

(p) See the Board of Education Educational Pamphlet, No. 45 ("The Work of Juvenile Organisations Committees").

The Education Act, 1918 (*g*), however, provided that social and physical training provided by voluntary agencies in the day or evening for children and young persons was an object which local education authorities might assist, and this led to the transfer of the Central Council to the Board of Education in 1919.

The committee consists of persons qualified to represent all kinds of social and recreational organisations and includes representatives of the Board, whose Parliamentary Secretary acts as its chairman, as well as representatives of the H.O. and the Ministry of Labour.

One of its chief aims is to encourage the formation of local committees of similar composition to the main committee. In the schemes which local education authorities were to submit to the Board of Education under the Education Act, 1921, they were expected to make provision for utilising the assistance of local committees in organising social and physical training in connection with public elementary schools. [279]

The Secondary Schools Examinations Council.—This council was constituted in 1917 to assist the Board of Education in giving effect to their scheme for concentrating the examination of pupils in secondary schools in the hands of examining bodies for whom the universities would take responsibility. In order to secure the necessary equality of standard, and the acceptance of the examination certificates by university and professional bodies as exempting the holders from certain other examinations, and to provide machinery for enabling the scheme to be improved from time to time, the Board of Education proposed to act as a co-ordinating authority with the help of the council.

Thus, the council's chief function is to co-ordinate the work of the regional boards controlling the first and second examinations in secondary schools, and to consider such questions of general policy as may arise from a consideration of matters connected with these examinations.

This council is peculiar in that executive powers are delegated to it. The members are appointed on the nomination of the universities, the associations of local education authorities and the Teachers' Registration Council.

It reports to the Board of Education, and the Board's officers may attend its meetings and speak, but they must not vote. It conducts periodic scrutinies of the papers worked in the examinations with a view to the detection of weakness as to standardisation (*r*). [280]

The Burnham Committee.—The Standing Joint Committee, consisting of representatives of local education authorities and teachers, is usually referred to as the Burnham Committee. In 1919 it was established in order to find "an orderly and progressive solution to the salary problem" by agreement on a national basis. Its deliberations are independent of the Board of Education. The agreed recommendations are reported to the President of the Board, and its financial and administrative recommendations require the Board's concurrence before they can become operative. Its major decisions are embodied in the following: "Third Report of the Standing Joint Committee on Standard Scales of Salaries for Teachers in Public Elementary Schools" (1927); "Second Report of the Standing Joint Committee on Standard

(*g*) S. 17, now replaced by the Education Act, 1921, s. 86; 7 Statutes 177.

(*r*) See "The Board of Education," by Sir L. A. Selby-Bigge (Putnam).

Scales of Salaries for Teachers in Secondary Schools" (1926); "Second Report of the Standing Joint Committee on Standard Scales of Salaries for Teachers in Technical and Art Schools" (1927). [281]

The Annual Report.—The Board of Education must annually lay before both Houses of Parliament a report of their proceedings during the preceding year(s). This is a valuable means of making public not only details of educational changes and developments, but also statistical information which is valuable to the administrator and the taxpayer.

The contents of the report occasionally comprise a special chapter reviewing historically some particular branch or aspect of the educational services, but information on certain points is required to be included in the report by some of the provisions of the Education Act, 1921, e.g. the bye-laws as to school attendance sanctioned under sect. 48 of the Act (i); particulars of the Board's proceedings under Part V. of the Act (which deals with blind, deaf, defective and epileptic children) (u); details as to the manner in which the attendance at school of children in canal boats has been enforced (v). [282]

Inspection.—As the Board's duty is to superintend matters relating to education, it follows that inspection forms an effective method of carrying out this statutory obligation, for by means of the inspectorate it may not only supervise the educational processes that come under its control but also safeguard the spending of public money.

The policy of the Board of Education to reduce the number of regulations has, of late, altered the character of the inspector's work. It is still an inspector's duty to ensure that the regulations relating to attendance registers and other school records (w) are complied with, but beyond this he has few rules to enforce.

The study of the educational problem of each district enables an inspector to view both aim and achievement in the schools in their right perspective. By conferring with the local education authorities and their administrative staffs, the Board's inspectors can do much to lubricate the educational machine and foster and preserve friendly relations between the central and local authorities. [283]

Determination of Questions and Disputes.—(1) *General Principles.*—It is one of the Board's functions to determine questions and settle disputes on a number of varied matters. That is to say, it has to act in a quasi-judicial capacity, the decision being one that is governed, not by a statutory direction to apply the law of the land and act accordingly, but by a statutory direction or permission to use administrative discretion and to be guided by considerations of public policy after the facts and the bearing of the law on the facts have been ascertained (x).

A dispute whether a school is necessary or not is typical of the kind of case calling for this class of decision.

In determining this question, the Board are to have regard to the interests of secular instruction, to the wishes of the parents as to the

(s) Education Act, 1921, s. 163; 7 Statutes 210.

(i) 7 Statutes 156.

(u) Education Act, 1921, s. 68; 7 Statutes 167.

(v) *Ibid.*, s. 50 (4); 7 Statutes 158.

(w) See Board of Education Administrative Memorandum No. 51 (January, 1927).

(x) Report of Committee on Ministers' Powers (Cmd. 4060 at p. 88).

education of their children, and to the economy of the rates (a). All these are questions of policy : the local education authority, parents, and rate-payers must all have an opportunity of presenting their case and of adducing evidence under each of the three heads. But when all this has been done, the question is still, in the main, one of policy, and it is the Board who have to decide whether the school is necessary or not. In the case of a school recognised as a public elementary school, where the number of scholars in average attendance is thirty or upwards, the Board are not to treat the school as unnecessary unless they are satisfied that alternative accommodation is available for the scholars in other public elementary schools in the area of the same local authority (b). [284]

(2) *Between Local Educational Authorities and Managers of Non-Provided Schools.*—It was anticipated by the legislature that in laying down the conditions to be observed in the conduct of non-provided schools there was the possibility that questions would arise on which the local education authority and managers would be unable to reach agreement. The duty was therefore placed on the Board of determining such questions (c). That is, the Board has to act judicially and come to decisions in the spirit and with the sense of responsibility of a tribunal whose task is to mete out justice.

In such cases, which will sometimes comprise both questions of law and fact, the Board will have to ascertain both the law and the facts, and must act in good faith and fairly listen to both sides. They are not, however, bound to treat such a question as though it were a trial. Neither have they power to administer an oath, nor need they examine witnesses.

They can obtain information in the way they think best, always giving a fair opportunity to those who are parties to the controversy for correcting or contradicting any relevant statement prejudicial to their view. Provided this is done, there is no appeal from a decision of the Board (d).

If, however, the Board have not acted judicially in this way, or have not determined the question which they are required by the Act to determine, there is a remedy by *mandamus* and *certiorari* (e). [285]

(3) *Sundry Instances.*—The following are among the most important questions and disputes which the Board may have to determine under the Act of 1921 (f) :

- (i.) Whether any purpose for which a council wish to exercise any powers relates to elementary or higher education (g).
- (ii.) The number, manner of appointment and proportion of managers, where voluntary schools are grouped under one body of managers, and the local education authority and the managers are unable to agree in the matter (h).

(a) Education Act, 1921, s. 19 ; 7 Statutes 139 ; as amended by the Education (Necessity of Schools) Act, 1933 ; 26 Statutes 130.

(b) Education (Necessity of Schools) Act, 1933, s. 1 (2) ; 26 Statutes 130.

(c) Education Act, 1921, s. 29 (9) ; 7 Statutes 146.

(d) *Board of Education v. Rice*, [1911] A. C. 179 ; 19 Digest 602, 290.

(e) *Ibid.*

(f) 7 Statutes 130 *et seq.*

(g) Education Act, 1921, s. 3 (3) ; 7 Statutes 132.

(h) *Ibid.*, s. 33 (2) ; 7 Statutes 148.

- (iii.) Whether the information relating to school attendance required to be inserted in the forms sent to the managers of schools by the local education authority is reasonable or not (*i*).
- (iv.) The amount due in any year to an applicant authority from a respondent authority under a contribution order in respect of border children (*k*).
- (v.) Where the applicant for a licence or a person to whom a licence has been granted, for a child to take part in an entertainment feels aggrieved by any decision of the local education authority (*l*).
- (vi.) In case of doubt, whether a child is or is not epileptic or defective within the meaning of the Education Act, 1921 (*m*). [286]

Public Inquiries by the Board of Education.—In the exercise of their powers or the performance of their duties under the Education Act, 1921, the Board are authorised by sect. 156 of that Act (*n*) to hold public inquiries. The person appointed for this purpose holds the sitting in some convenient place in the neighbourhood to which the inquiry relates and thereat he examines all the information and evidence offered by those concerned. A report is subsequently made to the Board, a copy of which the local education authority concerned are entitled to receive, and any person interested may also obtain a copy of the report on payment of the fee fixed by the Board (*o*).

The costs of the inquiry may be borne either by the local education authority or by the applicant for the inquiry or partly by each according to what appears reasonable to the Board (*p*).

The following are some of the cases in which public inquiries must be held. It will be observed that these are usually occasioned through the inability of the parties concerned to reach an agreement : [287]

- (i.) *Endowment of Non-Provided Schools.*—If a public inquiry is demanded by the local education authority for determining the amount of income from an endowment that should be paid to the local education authority (*q*). [288]
- (ii.) *Enforcement of the Duties of a Local Education Authority.*—If a local education authority fail to fulfil any of their duties under the Education Act, 1921 (*r*), or fail to provide the school accommodation that the Board consider necessary and the Board desire to make an order enforceable by *mandamus* (*s*). [289]
- (iii.) *Grouping of Non-Provided Schools of the same Denomination.*—If the managers of a non-provided school affected by any directions given by a local education authority for the

(*i*) Education Act, 1921, s. 153 (3) ; 7 Statutes 206.

(*k*) *Ibid.*, s. 123 (5) ; 7 Statutes 198.

(*l*) *Ibid.*, s. 101 (4) ; 7 Statutes 186 ; repealed but re-enacted in Children and Young Persons Act, 1933, s. 22 (6) ; 26 Statutes 185.

(*m*) *Ibid.*, s. 55 (6) ; 7 Statutes 163.

(*n*) 7 Statutes 207.

(*o*) Education Act, 1921, s. 156 (2) (e) ; 7 Statutes 208.

(*p*) *Ibid.*, s. 156 (2) (f) ; 7 Statutes 208.

(*q*) *Ibid.*, s. 41 ; 7 Statutes 152.

(*r*) 7 Statutes 130 *et seq.*

(*s*) Education Act, 1921, s. 150 ; 7 Statutes 205.

distribution, etc., of children between non-provided schools of the same denomination request a public inquiry (t).

[290]

- (iv.) *Approval of Bye-laws.*—If a public inquiry is requested by any of the parents of children attending public elementary schools in an area where it is proposed to make a bye-law providing that attendance at school shall not be compulsory until the age of six (u). [291]
- (v.) *Compulsory Acquisition of Land.*—Where a local education authority submit to the Board of Education an order for the compulsory acquisition of land and an objection to the order has been presented to the Board and not withdrawn, a public inquiry must be held in the locality (a). [292]
- (vi.) *Whether a New School is Necessary.*—When there is a proposal to provide a new public elementary school or an enlargement of a public elementary school, which in the opinion of the Board of Education amounts to the provision of a new school and there is an appeal to the Board of Education, the Board may hold a public inquiry (b). [293]

Functions the Board do not Perform.—Certain limitations of the Board's activities exist, either arising out of practice or imposed by statute and of these the undermentioned are important (c) :

- (i.) The Board have no authority over schools conducted for private profit. They do, however, in the case of secondary and preparatory schools, if the results of inspection are satisfactory, style them "efficient" and include them in their official list (d).
- (ii.) The Board have no authority over schools or branches of education which come under the control of another Government department such as army and navy schools, approved schools or poor law schools.
- (iii.) The Board do not engage, pay, promote or dismiss teachers in grant-aided schools.
- (iv.) The Board do not supply, prescribe or proscribe any text-books for use in grant-aided schools. Through their inspectors, however, they may criticise the text-books in use in schools.
- (v.) The Board do not prescribe the curriculum of grant-aided schools or the method of teaching, but the secular instructions in a school or centre must be in accordance with a suitable curriculum and syllabus framed with due regard to the organisation and circumstances of the school or schools concerned (e).
- (vi.) The Board cannot dissolve a local education authority or appoint persons to perform the duties or exercise the powers of such an authority.

(t) Education Act, 1921, s. 34 ; 7 Statutes 149.

(u) *Ibid.*, s. 48 (4) ; 7 Statutes 157.

(a) *Ibid.*, s. 111 and Fifth Schedule, para. (5) ; 7 Statutes 190, 223.

(b) *Ibid.*, s. 18 ; 7 Statutes 138.

(c) See "The Board of Education," Sir L. A. Selby-Bigge (Putnam).

(d) Report of the Departmental Committee on Private Schools (H.M. Stationery Office).

(e) Education Code, 1926, Art. 10.

- (vii.) The Board do not provide school buildings. The raising of loans by local education authorities for the purchase of land and erection of buildings, etc., is not sanctioned by the Board of Education, but by the M. of H.
- (viii.) The audit of the expenditure of local education authorities is not conducted under the direction of the Board, but by the district auditors of the M. of H. [294]

Educational Endowments.—Educational endowments have played an important part in the development of education in this country, particularly in higher education. The Education Department was brought into touch with endowments for elementary education by sect. 75 of the Elementary Education Act, 1870 (*f*). This gave the department a scheme-making power on the application of the governors, but in 1899 (*g*) a general jurisdiction over educational endowments, in substitution for the Charity Commissioners, was obtained.

Nothing in the Education Act, 1921 (*h*), is to affect any endowment or the discretion of any trustees in respect thereof; but if the income under the trusts must be applied for a public elementary school for which the local education authority provide, such income is to be paid to that authority and credited in aid of the rate levied for elementary education in the parish or parishes concerned. The Board are to determine any difference as to amount (*i*).

By the Orders in Council dated respectively August 7, 1900, July 24, 1901, and August 11, 1902, certain powers of the Charity Commissioners in connection with endowments held solely for educational purposes are now exercisable by the Board of Education either solely or concurrently with the Commissioners. The question whether an endowment, or any part of an endowment, is held for, or ought to be applied to, educational purposes must, however, still be decided by the Charity Commissioners.

For the purposes of the Charitable Trusts Acts, 1853 to 1869 (*k*), the Board of Education are deemed to be persons interested in any elementary school to which these Acts apply and in the endowment thereof (*l*). [295]

General Policy in Regard to Local Education Authorities.—It is worthy of note that the chief characteristics of the administration of education in England and Wales are :

- (1) the decentralisation of responsibility and control ;
- (2) the prominent part played by voluntary agencies ; and
- (3) the freedom of teachers from official control on questions relating to curricula, syllabuses of instruction and methods of teaching.

The relation of the central authority to local authorities is based on consultation and co-operation, which is established both by direct contact at Whitehall and through the intermediary of the Inspectors of the Board of Education who, since their headquarters are situated in the areas in which their work lies, are in a position to act as liaison officers. Both the central authority and the local authorities are, of

(*f*) 7 Statutes 121.

(*g*) Board of Education Act, 1899, s. 2 (2) ; 7 Statutes 124.

(*h*) These provisions first appeared in s. 13 of the Education Act, 1902.

(*i*) Education Act, 1921, s. 41 ; 7 Statutes 152.

(*k*) 2 Statutes 320 *et seq.*

(*l*) Elementary Education Act, 1870, s. 78 ; 7 Statutes 121.

course, bound by Acts of Parliament, of which the chief is the Education Act, 1921. The Board of Education, in discharge of the duties placed upon them, issue their main requirements in the form of Statutory Regulations, and in Circulars addressed to Local Education Authorities and other responsible bodies.

When considering the Board's policy in regard to local education authorities, it should not be forgotten that the teachers in the schools are not civil servants, that is to say they are neither employed nor paid by the State. They are the servants of the local authorities or of the governing bodies of the schools in which they work. Head teachers are free, within wide limits, to organise their schools according to their own ideas, and teachers generally are not bound by any official instructions relating to syllabuses or text-books or teaching methods.

This does not mean that the Board of Education refrains from advising teachers or that it has no influence on questions of organisation and curriculum. On the contrary, the Board's views can be and are presented in a variety of ways. In the first place the Board's Inspectors not only review the content and value of the work in the schools by means of reports which are conveyed to the school authorities, but, in the process of inspecting the schools, they are available as advisers to individual teachers. In the second place the Board of Education publishes from time to time pamphlets dealing with a variety of educational topics, including organisation, the teaching of particular subjects and educational experiments (*m*).

Undoubtedly the Board's chief control is a financial one. By the issue of Grant Regulations, by the necessity of submitting to the Board proposals for expenditure, and by the grants from public funds to local education authorities being made (in the main) on approved expenditure, the Board are placed in a very powerful position.

When, for example, the Education Code is considered, it will be noticed how in the course of years a large document has, with each issue, gradually diminished in size until now it contains the minimum of instructions necessary for purely administrative purposes. This change in policy is indicative of the Board's changed attitude towards the school curriculum. Years ago the Board laid down what was to be taught; now they only issue "Suggestions for the consideration of Teachers."

To-day the curriculum is a matter for local education authorities and head teachers, although the Board, through their inspectors, criticise and advise.

As a rule the Board appear to prefer a policy of suggestion and persuasion to one of insistence; but their powers are wide and definite should they desire or find it necessary to exercise them. For example, if a local education authority fail to fulfil any of their duties under the Act, the Board may, after holding a public inquiry, make such an order as they think necessary or proper, and any such order may be enforced by a *mandamus* (Education Act, 1921, sect. 150) (*n*).

Generally it may be said that by conference with the Board's officials local education authorities find that the pooling of information and experience is mutually helpful. But the predominant factor present is frequently that of financial control, with the Treasury in the background, particularly during times of restricted national expenditure.

(*m*) See Board of Education Educational Pamphlet, No. 94.

(*n*) 7 Statutes 205.

Although the Board are, in many cases, in the position of arbitrator when there are disputes between local education authorities, they would appear to prefer not to intervene unless the authorities have explored every avenue for arriving at a settlement, and have failed to reach agreement.

An illustration of the Board's control of local education authorities is furnished by a consideration of sect. 148 (1) of the Education Act, 1921 (*o*). This provides that a local education authority may appoint necessary officers, including teachers, and may assign to them such salaries (if any) as they think fit. At first view this appears to mean that the legislature has given education authorities *carte blanche* to appoint and pay teachers as they wish, that is, that a local education authority have complete control of staffing and salary matters. The Board, however, exercise their control through the Education Code (*p*), where it is laid down that an approved establishment of teachers must be maintained (*q*), that only teachers recognised by the Board must be employed (*r*), and that the Board can in case of misconduct insist that certain teachers shall not be employed (*s*).

Also the payment of grant to a local education authority by the Board depends upon salaries being paid in accordance with scales of salaries detailed in the reports of the Standing Joint Committee (Burnham Committee) (*t*).

As a final point, it must not be forgotten that, although an endeavour has been made to elevate the education service above the arena of party politics, the Board of Education are bound to reflect in their policy the political considerations of the times. Such influences naturally have their effect in the Board's relations with local education authorities, so that, while there is a more or less consistent factor of control being exercised for general administrative purposes, there is, at the same time, in operation a variable factor which is the direct outcome of political considerations. [296]

(*o*) 7 Statutes 204.

(*p*) S.R. & O., 1926, No. 856.

(*q*) Art. 11.

(*r*) Art. 13 and Schedules I, II.

(*s*) Arts. 18 and 19.

(*t*) See the Board's Regulations for the payment of substantive grant to local authorities.

BOARD OF TRADE

	PAGE		PAGE
ESTABLISHMENT AND CONSTITUTION OF THE BOARD	141	GAS — — — — —	142
ALTERATIONS OF POWERS OF THE BOARD — — — — —	141	WEIGHTS AND MEASURES	142
		FORESHORE — — — — —	143
		GENERAL — — — — —	143

See also titles :

BYELAWS ; CONSTITUTIONAL LAW ; ESPLANADES, PROMENADES AND BEACHES ; GAS ; GOVERNMENT AND LOCAL INSPECTORS ; GOVERNMENT CONTROL ;	INQUIRIES ; PLEASURE BOATS ; SEA DEFENCE WORKS ; SEASHORE ; SECRETARY OF STATE ; WEIGHTS AND MEASURES.
---	---

Establishment and Constitution of the Board.—Commissioners of Trade and Plantations were established by Charles II. in 1660. By an Act of 1782 (*a*), these commissioners were abolished and their powers transferred to such committee or committees of the Privy Council as His Majesty should appoint to act during his pleasure. The actual title “Board of Trade” appears to have been fixed by the Harbours and Passing Tolls, etc., Act, 1861, whereby it is provided by sect. 65 that the term “Board of Trade” shall be taken to mean the “Lords of the Committee of the Privy Council for the time being appointed for the consideration of matters relating to trade and foreign plantations,” and this definition has since been adopted with merely verbal alterations in the Interpretation Act, 1889 (*b*). Apparently the constitution of the Board is still regulated by an Order in Council of August 23, 1786, the terms of which are given in cols. 250—251 of the Parliamentary Debates for April 24, 1923 (Vol. 163). The First Lords of the Treasury and the Admiralty, all the Secretaries of State, the Chancellor of the Exchequer, the Archbishop of Canterbury, the Speaker of the House of Commons, and some other persons are members of the Board. The Board does not, however, meet for the transaction of business, and the President of the Board, who is appointed by Royal Warrant, is in practice responsible for the due discharge of the Board’s functions. [297]

Alterations of Powers of the Board.—Many changes were made in the powers and duties of the Board of Trade after the war. Those under the Electric Lighting Acts, 1882 to 1909, were transferred to the Minister of Transport, but are in general to be exercised by the Electricity Commissioners (*c*), and those in regard to docks, piers, harbours, canals and railways, light railways and tramways, roads, bridges and ferries to the Minister of Transport (*d*). The function of investing a water

(*a*) 22 Geo. 3, c. 82, s. 15 ; 3 Statutes 199.

(*b*) S. 12 (8) ; 18 Statutes 995.

(*c*) Electricity (Supply) Act, 1919, s. 39 (1) ; 7 Statutes 777.

(*d*) M. of T. Act, 1919, s. 2 (1) ; 3 Statutes 422.

company or other undertakers with powers by a provisional order of the Board of Trade passed from that Board to the M. of H. (e), while the powers of the Minister with respect to gas undertakings of local authorities (except sanctioning the borrowing of money) were transferred to the Board of Trade (f). (See also under those titles, and also under WEIGHTS AND MEASURES and SEASHORE.) [298]

Gas.—The Board of Trade is invested with important powers as respects gas undertakings by the Gas Regulation Act, 1920 (g). By sect. 1 of that Act the Board is empowered to make orders having statutory effect for charging by thermal units, and by sect. 16 to make rules in relation to applications and other proceedings under the Act.

Formerly, where a company or other undertakers proposed to set up works for the supply of gas, it was necessary either to promote a private Bill or to obtain from the Board of Trade a provisional order under the Gas and Water Works Facilities Act, 1870 (h). Any such order had to be confirmed by means of a Bill, which passed through the same stages as a private Bill. But sect. 10 of the Gas Regulation Act, 1920, allowed the Board by a special order approved by Parliament to do anything which could be effected under the above-mentioned Act of 1870, or any Act amending that Act, by a provisional order confirmed by a confirmation Bill. Rules applying to applications for special orders will be found in the Gas (Special Orders) Rules, 1922 (i).

Under sect. 4 of the Act of 1920 the Board is to appoint three persons to act as gas referees in the testing of gas, and a competent and impartial person to be chief gas examiner. The local authority of the area (viz. the council of the county, borough or urban district, see sect. 18) may, unless themselves undertakers, also appoint a gas examiner to test the gas and the pressure at which it is supplied. The gas referees are to prescribe methods by which tests shall be made, and the time and form of the reports to be made by the gas examiner to them, the local authority by whom the gas examiner is appointed and to the gas undertakers, and the means by which the results of the tests are to be made available to the public (sect. 5). If the local authority or the undertakers feel themselves aggrieved by any requirement of the gas referees, they may appeal to the chief gas examiner. The Board of Trade, by sect. 14 of the Act of 1920, is also directed to hold examinations for the appointment of gas inspectors, and by sect. 15 all gas undertakers must furnish to the Board annual reports and such statistics and returns as are required. [299]

Weights and Measures.—The Board of Trade as regards weights and measures are responsible for the custody and examination of the standards under sects. 4 to 9 of the Weights and Measures Act, 1878 (j). By sect. 28 of the Weights and Measures Act, 1889 (k), bye-laws made with respect to the sale of coal must be approved by the Board of Trade. By an Act passed in 1904 (l), the Board may make general regulations

(e) M. of H. Act, 1919, s. 3 (2), (4); 3 Statutes 417. See also S.R. & O., 1920, No. 2126.

(f) M. of H. Act, 1919, s. 3 (3), (4); 3 Statutes 418. See also Transfer of Powers as to Gas Undertakings Order, 1920 (S.R. & O., 1920, No. 2125).

(g) 8 Statutes 1278. But see the Gas Undertakings Bill at present before Parliament.

(h) 8 Statutes 1254—1262.

(i) S.R. & O., 1922, No. 187.

(j) 20 Statutes 369—371.

(k) *Ibid.*, 401.

(l) Weights and Measures Act, 1904, s. 5; 20 Statutes 409.

with respect to the verification and stamping of weights and measures, the obliteration of stamps, and generally for the guidance of local authorities (*m*). The Sale of Food (Weights and Measures) Act, 1926 (*n*), to prevent the giving of short weight in certain articles of food, by sect. 9 (1) gives the Board of Trade power to make regulations after consultation with the M. of A. & F. (*o*). The Board must also keep models of the apparatus for testing petroleum (*p*), and verifying apparatus for testing the flash point of oils and they also control the hall-marking of gold and silver goods. The head of the Standards Department is also head of the metrological branch of the National Physical Laboratory. [300]

Foreshore.—Under the Crown Lands Act, 1866 (*q*), the Board of Trade were given all the powers and authorities, rights and privileges over the foreshore, which the Commissioners of Woods had over other Crown lands. For this purpose the term “foreshore” was defined as including “the shore and bed of the sea and of every channel, creek, bay, estuary, and of every navigable river as far up the same as the tide flows.” The powers as to sale and lease are contained in the Crown Lands Acts, 1845, 1866 and 1927 (*r*). By sect. 12 of the P.H.A. Amendment Act, 1907 (*s*), there must be no interference by a local authority with the foreshore, in the exercise of a power given by that Act, without the consent in writing of the Board of Trade; and by sect. 82 (4) of the same Act (*t*) no bye-laws affecting the foreshore below high-water mark may be made under the section by a local authority, without the consent of the Board. Under sect. 3 (3) of the Bridges Act, 1929 (*u*), before making an order as to the reconstruction of a bridge crossing tidal lands, the Minister of Transport must consult the Board of Trade, and under sect. 44 of the Town and Country Planning Act, 1932 (*a*), any works on the foreshore may only be carried out after consultation with the Board of Trade. [301]

General.—The Board of Trade has many functions that are not connected with local authorities, the chief of them being in regard to customs and excise companies and bankruptcy proceedings, and statistics of trade generally. The Board also administers the law as to patents and designs, and a representative is a member of the council of the British Institute of Industrial Art, and also of the Board of Scientific and Industrial Research.

The Board of Trade is the department which has the general supervision of all matters relating to merchant shipping and seamen (*b*), and all consular officers and officers of customs abroad, and all local marine boards and superintendents must make and send to the Board any returns or reports required by them (*c*). The Board is also the authority for holding inquiries under the Boiler Explosions Acts of 1882

(*m*) See S.R. & O., 1907, No. 698; 1926, Nos. 1348 and 1659; 1929, Nos. 183 and 751.

(*n*) S. 9 (1); 20 Statutes 422.

(*o*) S.R. & O., 1927, No. 528.

(*p*) Petroleum (Consolidation) Act, 1928, s. 20; 13 Statutes 1184.

(*q*) Ss. 7, 8; 3 Statutes 311.

(*r*) 3 Statutes 273, 309, 330.

(*s*) 13 Statutes 914.

(*t*) *Ibid.*, 941.

(*u*) 9 Statutes 270.

(*a*) 25 Statutes 512.

(*b*) Merchant Shipping Act, 1894, s. 713; 18 Statutes 402.

(*c*) *Ibid.*, s. 714.

and 1890 (*d*). By the P.H.A., 1904 (*e*), regulations made by the M. of H. as to the prevention of conveyance of infection by ships may only be made after consultation with the Board of Trade. By sect. 94 (*4*) of the P.H.A. Amendment Act, 1907 (*f*), any pleasure boat licensed by or under regulations of the Board of Trade need not be licensed by the local authority. See under title PLEASURE BOATS. [302]

The Board is the authority to superintend the taking of a census of production, and the exercise and performance of the powers and duties of a local authority are to be treated as the trade or business of that authority in the census of production taken by the Board (*g*). [303]

(*d*) 8 Statutes 500, 508.

(*e*) S. 1; 13 Statutes 893.

(*f*) 13 Statutes 947.

(*g*) Census of Production Act, 1906, s. 7; 19 Statutes 690.

BOATS AND BOATMEN

See PLEASURE BOATS.

BOATS, CANAL

See CANAL BOATS.

BONDS

	PAGE		PAGE
INTRODUCTORY NOTE	- 145	Records	- 147
CORPORATION BONDS	- 145	Interest	- 147
Mode of Issue	- 146	Repayment	- 148
Price of Issue	- 146	Model Clause	- 148
Stamp Duty	- 147	LONDON	- 152
Transfer and Transmission	- 147		

See also titles : BORROWING ;
HOUSING BONDS ;
REDEMPTION OF CAPITAL EXPENDITURE ;
STOCK.

Introductory Note.—The Public Authorities and Bodies (Loans) Act, 1916, sect. 1 (a), provided that “during the continuance of the present war and a period of six months thereafter,” the council of any county, municipal borough, or urban district might, with the consent of the Treasury and subject to Treasury regulations, borrow any sums which they have power to borrow by issuing bearer bonds or other securities to bearer. Although this provision was enacted to permit foreign borrowing in a war-time emergency and was made permanent by the Housing (Additional Powers) Act, 1919, sect. 8 (b), it is stated on p. 90 of the Interim Report of Lord Chelmsford’s Committee (c) that the powers of the Act of 1916 had in fact been used on one occasion only, viz. in 1920, and for practical purposes the Act was a dead letter. It has consequently been repealed, without re-enactment, by the L.G.A., 1933. [304]

The success which attended the large-scale issue of local bonds for housing purposes (see title HOUSING BONDS) in 1920, and later years suggested the introduction of a somewhat similar form of security which could be employed for *any* authorised capital purpose, and in 1927 the Coventry Corpn. obtained power by a local Act to create and issue “Corp. Bonds.” Similar powers have since been granted to a number of other corpns. Power to issue corp. bonds is additional to, and not in substitution for, any other power to issue stock, mortgages, or other form of authorised security. [305]

Corp. Bonds.—Corp. bonds issued under a local Act rank equally with and have the same status as all other securities issued by the corp., without any priority or preference arising out of the date of any statutory borrowing or the date of issue. They are secured on all the rates and revenues of the corp., and may be issued in denominations of five pounds and multiples of five pounds, for periods of not less than five years. In fact, no actual bond

(a) 10 Statutes 858.

(b) 13 Statutes 970. This section repealed the words “during the continuance of the present war and a period of six months thereafter.”

(c) Cmd. 4272.

is issued to the lender, but he is given a certificate issued by the chief financial officer specifying the denomination of the bond, the name of the registered holder, the date of issue, and the amount and period for which it is issued. Moneys raised by the issue of corp'n. bonds are available for any purpose for which the corp'n. are authorised to borrow. To authorise an issue there must always be a margin of unexercised borrowing powers to cover the proceeds of the issue. [306]

Mode of Issue.—While there is no reason why corp'n. bonds should not be issued through the medium of an advertised prospectus in the same way as stock (see title STOCK), or through brokers on the local stock exchange, probably the most convenient and economical method is to have them "on tap" at the treasurer's office. Demand for bonds may then be stimulated as required by press advertisements. Investors are required to complete a form of application, on receipt of which, with the sum invested, the bond certificate is issued in exchange. Simplicity of administration is one of the features of corp'n. bonds. They make a strong appeal to the small investor, since they may be issued for any sum being a multiple of five pounds. It is usual to allow to bankers and brokers, who are supplied with forms of application, a commission of 5s. per cent. on the nominal value of bonds applied for through their agency. [307]

Price of Issue.—The price of and rate of interest payable on the bonds are determinable by the corp'n. from time to time, and in practice two alternative methods are followed. Some corp'ns. issue bonds consistently at par, as in the case of mortgages (see title MORTGAGES), varying the rate of interest for new money from time to time as market conditions alter. Others make a practice of fixing a nominal rate of interest, and issue the bonds at a discount which varies with the period for which the bonds are issued. The schedule of issue prices may then be varied, as conditions alter, with a much finer adjustment than is possible by varying the actual rate of interest. Thus, on the first issue in 1927 of 4 per cent. Coventry Corp'n. Bonds, the scheduled price of issue was £96 per cent. for a bond of five years' currency, £92 10s. per cent. for a bond of 10 years' currency, and £88 10s. per cent. for a bond repayable in 20 years. As the bonds are repayable at par at maturity, the true yield to the investor can only be ascertained by taking into account the annual value of the discount, which sum accrues to the lender during the life of the bond. The yields of the typical bonds exemplified are as follows :

Period.	Price of issue.	Flat yield %.	Tax @ 4/- in the £.	Net flat yield.	Annual value of discount.	Total net yield.
Years	£	£ s. d.	s. d.	£ s. d.	s. d.	£ s. d.
5	96	4 3 4	16 8	3 6 8	15 4	4 2 0
10	92½	4 6 6	17 4	3 9 2	13 6	4 2 8
20	88½	4 10 5	18 1	3 12 4	8 9	4 1 1

The premium accruing to the lender on repayment of the bond (by reason of the discount on issue) is not subject to income tax or sur-tax, and this immunity provides a definite attraction for this method of issue. Alterations in money market conditions are reflected by increasing or reducing the scheduled issue prices ; any such alteration applies only to bonds issued after the date of the alteration. [308]

Stamp Duty.—Corpn. bonds are deemed to be loan capital or funded debt within the meaning of sect. 8 of the Finance Act, 1899 (*d*), as amended by sect. 10 of the Finance Act, 1907 (*e*), and capital stamp duty is payable at the rate of 2s. 6d. per cent. on the nominal amount of bonds issued, with a rebate of 2s. per cent. on the amount of bonds issued for the purpose of converting or consolidating existing debt. The duty is payable to the commissioners of Inland Revenue before the issue is made; where bonds are issued continuously arrangements may be made to pay duty on a round sum in the first instance, and when bonds to the amount of that sum have been issued a further payment of duty is made in advance.

Stamp duty on transfers, which is usually borne by the corpn., may be compounded for under sect. 115 of the Stamp Act, 1891 (*f*). [309]

Transfer and Transmission.—Transfer of a bond, in whole or in part, is effected by deed in the form prescribed by the local Act or in a form substantially to the like effect; any part of a bond transferred must be for £5 or a multiple of £5. As a rule no fee is payable on transfer, and the stamp duty on deeds of transfer is usually paid by the corpn. In accordance with general custom, the register of transfers is closed for thirty days immediately before the date of interest payment in each year. Any person becoming entitled to a bond by reason of the death or bankruptcy of a holder may by producing evidence of title either be registered as holder of the bond or make a transfer of the bond. Where two or more persons are registered as holders of a bond they are deemed to be joint holders with right of survivorship between them.

In some cases, the corpn. will, on the death of a bond-holder, redeem any bond from his personal representative at par (or in the case of bonds issued at a discount, at the scheduled price then current for new bonds repayable on the same date as the bond offered for redemption), subject to a deduction at the rate of 5s. per £100 on the nominal value of the bond. [310]

Records.—A register of bond-holders must be kept containing name, address and description of each holder, a statement of the denomination of the bonds held by him, the price at which and the periods for which they are issued, and the numbers and dates of the certificates issued. The date of registration and the date of ceasing to be registered must also be entered in the register. A register of transfers must also be kept. It is found most convenient in practice to secure the appointment of the chief financial officer to keep this register. [311]

Interest.—Interest at the rate named in the bond certificate is paid half-yearly by means of crossed warrant sent by post to the holder at the address shown in the register, unless the holder requests that payment be made direct to his banking account. Holders should be encouraged to give such authority, as by arrangement with the banks the head offices will accept one warrant for the sum total of the interest payments due to their customers; this is mutually advantageous to corpn. and bond-holder, for there is consequently a reduction in the number of warrants issued, and the arrangement ensures that the interest is credited to the holder's bank account at the appropriate date. Income tax is, of course, deductible from all interest payments, and the concession allowed in the case of local (housing) bonds,

(*d*) 16 Statutes 711.

(*e*) *Ibid.*, 737.

(*f*) *Ibid.*, 653.

whereby income tax is not deductible from interest payments when the holding does not exceed £100, does not apply to corp'n. bonds. Where more persons than one are registered as joint holders of a bond any one of them may give an effectual receipt for interest, unless notice to the contrary has been given to the corp'n. by any other of them.

If any interest due remains unpaid for two months after demand in writing, the persons entitled thereto may apply to the High Court for the appointment of a receiver, and the court may if it thinks fit appoint a receiver on such terms as it thinks fit, with the necessary power to collect, recover and apply moneys and rates due to the corp'n. [312]

Repayment.—Whether issued at par or at a price lower than par, bonds are repayable at par on the dates specified in the bond certificates, unless they have previously been cancelled by purchase in the open market or by agreement with the bond-holder. Repayment will be made out of funds provided by other borrowings, or out of sinking fund moneys provided in accordance with the borrowing power or loan sanction exercised by the issue of the bonds (see title BORROWING). Where a bond has been issued at a discount, the amount of the discount must be treated as a loan authorised by a statutory borrowing power and repayable out of the revenues of the corp'n. on or before the date for repayment of the bond; the amount of the discount is usually provided by equal annual instalments over the life of the bond.

As an alternative to repayment, bonds may be renewed by agreement with the holder, for such term and at such rate of interest as may be agreed. [313]

Model Clause.—The clause which first authorised the issue of corp'n. bonds is set out below (g) :

“(1) In addition to any other form of borrowing the corp'n. may borrow any sums which they have power to borrow under this Act or any other Act or Order by the issue of bonds to be called ‘corp'n. bonds’ (and in this Act referred to as ‘bonds’) in accordance with the provisions of this Act.

(2) The provisions set out in the Sixth Schedule to this Act shall have effect with regard to bonds.

(3) All bonds issued under this section shall rank equally without any priority or preference by reason of any precedence in the date of any statutory borrowing power or in the date of issue of the bonds or on any other ground whatsoever and shall also rank equally with and have the same status as all other securities issued by the corp'n.

(4) Bonds shall be deemed to be loan capital or funded debt within the meaning of sect. 8 of the Finance Act, 1899, as amended by sect. 10 of the Finance Act, 1907.

(5) The provisions of sect. 115 of the Stamp Act, 1891 (which relates to the composition for stamp duty), shall with the necessary adaptations apply in the case of bonds as if those bonds were stock or funded debt within the meaning of that section.” [314]

(g) Coventry Corp'n. Act, 1927, s. 136 (17 & 18 Geo. 5, c. xc.). A later example of this type of Local Legislation is to be found in the Kingston-upon-Hull Corporation Act, 1933, s. 51 and Second Schedule.

This clause was supplemented by the following provisions in the Schedule to the Act (*gg*):

“ 1. Bonds shall be secured on the rates and revenues of the corp'n. and any moneys borrowed by means of bonds shall be principal moneys as defined by sect. 108 (security for principal moneys) of the Act of 1900.

2. Bonds shall be issued in such amounts in denominations of £5 and multiples of £5, and for such periods not being less than five years as the corp'n. may determine.

3. (a) Bonds may be issued at such price and at such rates of interest as the corp'n. may from time to time determine.

(b) The nominal amount of bonds issued shall not exceed in the aggregate according to the price of issue such amounts as will together produce the actual amount of money for the time being authorised to be borrowed by the corp'n.

(c) Where a bond has been issued at a price lower than par so much of the issue as represents the difference between the price of the bond as issued and its nominal value shall be treated as a loan authorised by a statutory borrowing power and repayable out of the revenues of the corp'n. on or before the date for repayment specified in the certificate issued in respect of the bond.

4. Bonds shall be repayable at par (unless the same shall have been previously cancelled by purchase in the open market or by agreement with the bondholder) at the Council House, Coventry, on the dates specified in the certificates issued in respect of the bonds and no interest shall be payable thereon in respect of any period after the date upon which the bond is repayable.

5. (1) The treasurer shall keep a register of all persons who are holders for the time being of bonds.

(2) The register shall contain the following particulars :

(a) The name, address and description of each holder, a statement of the denomination of the bonds held by him, the price at which and the periods for which they are issued, and the numbers and dates of the certificates issued to him as hereinafter provided.

(b) The date of registration of each holder and the date on which he ceased to be so registered.

(3) The register shall be *prima facie* evidence of any matter entered therein in accordance with the provisions of this Act and of the title of the persons entered therein as holders of bonds.

6. (1) The corp'n. shall issue to each holder of a bond a certificate in respect thereof duly numbered and dated and specifying the denomination of the bond and the period for which it is issued.

(2) If a certificate is worn out or damaged the corp'n. on the production thereof may cancel it and issue a new certificate in lieu thereof.

(3) If a certificate is lost or destroyed the corp'n. on proof thereof to their satisfaction and if they so require on receiving an indemnity against any claims in respect thereof may give a new certificate in lieu of the certificate lost or destroyed.

(4) An entry of the issue of a substituted certificate shall be made in the register.

(5) A certificate shall be in the following form or in a form substantially to the like effect :

No.....

CITY OF COVENTRY

Coventry Corporation Bonds

..... per centum Coventry Corpn. Bond repayable at par.....
19..... at the Council House, Coventry.

This is to certify that.....of.....
is the registered holder of a Corpn. bond for.....
pounds (£.....) issued by the Mayor, Aldermen and Citizens
of the City of Coventry under the Coventry Corpn. Act, 1927, at
.....

Signed.....

City Treasurer

Date.....

7. The certificate shall be *prima facie* evidence of the title of the person therein named, his executors, administrators or assigns to the bond therein specified, but the want of a certificate if accounted for to the satisfaction of the Corpn. shall not prevent the holder of the bond from disposing of and transferring the bond.

8. (1) The transfer of a Corpn. bond shall be by deed in the following form or in a form substantially to the like effect :

FORM OF DEED OF TRANSFER

Coventry Corporation Bonds

I,.....
in consideration of the sum of.....
paid by.....
(hereinafter called 'the Transferee') do hereby assign and transfer to the said Transferee :

To hold unto the Transferee, his Executors, Administrators and Assigns subject to the several conditions on which I held the same immediately before the execution hereof; and I, the said Transferee, do hereby agree to accept and take the said.....
subject to the conditions aforesaid.

As witness our hands and seals this.....day of.....
in the year of Our Lord one thousand nine hundred and.....

(2) A bond may be transferred in whole or in part so, however, that any part transferred shall not be for an amount other than an amount for which a bond may be issued by the corpn.

(3) The deed of transfer shall be delivered to and retained by the corpn. and the corpn. shall enter a note thereof in a book to be called the 'Register of Transfers of Coventry Corpn. Bonds' and shall endorse on the deed of transfer a notice of that entry.

(4) The corpn. shall upon receipt of the deed of transfer, duly executed and properly stamped, together with the certificate issued in respect of the bond, enter the name of the transferee in the register and shall

issue a new certificate or certificates to the transferee or to the transferor and transferee as the case may require.

(5) Until the deed of transfer and the certificate have been delivered to the corpn. as aforesaid the corpn. shall not be affected by the transfer and the transferee shall not be entitled to receive any payment of interest on the bond.

(6) The corpn. before registering a transfer of a bond may if they think fit require evidence by statutory declaration or otherwise of the title of any person claiming to make the transfer.

9. The corpn. may close the register for a period not exceeding thirty days immediately before the thirty-first day of March and the thirtieth day of September in any year respectively and notwithstanding the receipt by the corpn. during those periods of any deed of transfer the half-yearly payment of interest next falling due may be made to the persons registered as holders of bonds on the date of the closing of the register.

10. (1) Any person becoming entitled to a bond by reason of the death or bankruptcy of a holder or by any lawful means other than a transfer may by the production of such evidence of title as the corpn. may require either be registered as holder of the bond or instead of being himself registered may make such transfer of the bond as the holder could have made and the corpn. shall issue a certificate accordingly.

(2) Until such evidence as aforesaid has been furnished to the corpn. the corpn. shall not be affected by the transmission of the bond and no person claiming by virtue thereof shall be entitled to receive any payment of interest thereon.

(3) Where two or more persons are registered as holders of a bond they shall be deemed to be joint holders with right of survivorship between them.

11. (1) Unless the holder of a bond otherwise requests the corpn. may pay the interest thereon by posting a warrant to the holder at his address as shown in the register.

(2) The posting by the corpn. of a letter containing an interest warrant addressed to a holder as aforesaid shall as respects the liability of the corpn. be equivalent to the delivery of the warrant to the holder himself.

12. The corpn. shall not be required to pay any executors or administrators any interest on bonds held by their testator or intestate until the probate of the will or the letters of administration has or have been left with the corpn. for registration.

13. The corpn. before paying any interest on any bonds may if they think fit require evidence by statutory declaration or otherwise of the title of any person claiming a right to receive the interest.

14. Where more persons than one are registered as joint holders of a bond any one of them may give an effectual receipt for any interest thereon unless notice to the contrary has been given to the corpn. by any other of them.

15. No notice of any trust shall be entered in the register or in any other book kept by the corpn. or be receivable by the corpn.

16. (1) If at any time any interest due on any bonds remains unpaid for two months after demand in writing the persons entitled thereto may apply to the High Court for the appointment of a receiver and the Court may if it thinks fit appoint a receiver on such terms as it thinks fit.

(2) The receiver shall have the like power of collecting, receiving, recovering, and applying moneys and of assessing, making, and recovering

all rates for the purpose of obtaining the same as the corpn. or any other officer thereof would or might have and such powers and duties as the court thinks fit and shall apply all moneys so collected and received after paying all such costs as the court may direct for the purposes of this Act." [315]

London.—Local authorities have power under sect. 5 of the Local Loans Act, 1875 (*h*), to issue debentures (*i.e.* bonds) subject to the terms of the Act, and these debentures may either be payable to bearer or transferable by deed. The Act is complex and, in some respects, obscure, and this consideration as well as the provision as regards priorities (sect. 8) have operated against a general use being made of the Act. The priority given to certain loans has been repealed by the L.G.A., 1933, but this repeal does not apply to London. The L.C.C. have not raised money under the Act of 1875, although the Corporation of the City of London have done so.

The L.C.C. have also power to issue bearer bonds under the Public Authorities and Bodies (Loans) Act, 1916 (see *ante*, p. 145), and as the repeal of that Act by the L.G.A., 1933, does not apply to London, in London the power still stands. It was exercised by the L.C.C. in 1920, when £8½ millions of 5½ per cent. bonds (convertible into stock) were issued which were redeemable in 1930, and to the extent to which they were not converted the bonds were paid off in that year. Under the L.C.C. (Money) Act, 1920 (*hh*), the council obtained power to register any bearer bonds or other securities issued under the Acts of 1916 and 1919 above mentioned.

The L.C.C. has no power under its local Acts to issue bonds, but it should be mentioned that in connection with the stocks issued by the L.C.C. under its local Acts, the council can issue stock certificates to bearer—which are virtually bonds to bearer—but this is only a form in which the stock may from time to time stand and does not constitute an authority to make an issue of bonds *per se*.

The City of London Corpn. have from time to time obtained powers under local Acts to issue bonds, and the following bonds are outstanding at the present time:

3¼ per cent. Bonds (1919–73).—Authorised by the Corpn. of London (Bridges) Act, 1911 (*i*), and secured on the revenues of the Bridge House Estates, with collateral security of the other estates and revenues of the corpn. subject to existing charges. £1,000,000 issued in February, 1914, at 95. Redeemable at par by annual drawings. £870,800 outstanding at March 1, 1934.

3½ per cent. Bonds (*Aldgate Tithes*) 1913–68.—Authorised by City of London (Tithes and Rates) Act, 1910 (*ii*), and secured on tithe rates leviable in the Parish of St. Botolph Without, Aldgate. £133,000 issued at par in 1910 and redeemable by annual drawings. £107,900 outstanding at November 1, 1933.

Short Term Bonds, for 1 year, are issued for various public works and improvements. £681,400 at 1½ per cent. were outstanding at July 1, 1933, redeemable at par on July 1, 1934.

(*h*) 12 Statutes 242.

(*hh*) S. 8 (10 & 11 Geo. 5, c. cxlvii.).

(*i*) 1 & 2 Geo. 5, c. cxx.

(*ii*) 10 Edw. 7 & 1 Geo. 5, c. xxx.

Local bonds (*j*) for housing have been issued by the L.C.C. under the terms of the Housing Act, 1925 (sect. 87) (*k*), and the regulations made by the M. of H. thereunder. Housing bonds cannot be issued as bearer bonds, but only in registered form. They can only be issued to provide funds for housing purposes. They are a trustee security by virtue of sect. 1 (1) (p) (*l*) of the Trustee Act, 1925.

The L.C.C. has made extensive use of the power to issue local bonds for housing, and the bonds issued by the council are dealt in on the London Stock Exchange and are officially quoted. The amount of these bonds outstanding at March 31, 1934, was :

6 per cent.	—	—	—	—	—	—	—	£1,330,885
5 " "	—	—	—	—	—	—	—	£3,955,050
4½ " "	—	—	—	—	—	—	—	£505,755
4 " "	—	—	—	—	—	—	—	£276,070
								<u>£6,067,760</u>

[316]

(*j*) For full treatment of these bonds, see title HOUSING BONDS.

(*k*) 13 Statutes 1050.

(*l*) 20 Statutes 97.

BONDS, HOUSING

See HOUSING BONDS.

BOOKS, ACCOUNTS, AWARDS, ETC., CUSTODY AND INSPECTION OF

See RECORDS AND DOCUMENTS.

BORIC ACID IN FOOD

See PRESERVATIVES.

BOROUGH

See CHARTERS OF INCORPORATION; COMMON LAW CORPORATIONS;
COUNTY BOROUGH; MUNICIPAL CORPORATIONS.

BOROUGH ACCOUNTANT

See FINANCIAL OFFICER.

BOROUGH ACCOUNTS

	PAGE		PAGE
GENERAL - - - -	154	Primary Records and Accounts	153
POWER OF MINISTER OF HEALTH		Expenditure and Cost Accounts	159
TO PRESCRIBE ACCOUNTS -	156	Loan and Capital Accounts -	159
THE ACCOUNTS (BOROUGH AND		DATE OF CLOSING ACCOUNTS -	160
METROPOLITAN BOROUGH)		PUBLICATION OF ACCOUNTS -	160
REGULATIONS, 1930 - -	157	(1) Abstract of Accounts -	160
Personal Accounts - -	157	(2) Epitome of Accounts -	161
Impersonal Accounts - -	157	FINANCIAL RETURNS - -	161
Final Accounts - -	158	LONDON - - - -	163
Balance Sheet - -	158		

See also titles :

ACCOUNTS OF LOCAL AUTHORITIES;
AUDIT;
AUDITORS;
BORROWING;
COSTING;
FINANCE;

FINANCE DEPARTMENT;
RATE ACCOUNTS, and financial titles
passim, a complete list of which
will be found at the head of title
FINANCE.

General.—The statutory regulation and consequent organisation of the accounts of a municipal borough depend ultimately upon the power to levy a general rate, and in a broad sense the borough accounts may be said to be the accounts of the general rate fund.

Within the ambit of the general rate fund account, transactions may be classified according to the different services administered and certain accounts may be kept quite separate (see *post*, p. 155), in particular the accounts of trading undertakings. Even these latter accounts are associated with the rate fund for such purposes as the transfer of surplus profits or the provision of deficiencies.

Formerly a municipal borough levied two rates, the borough rate and the general district rate, and the accounts, however subdivided, had to be organised in such a way as to provide a rigid separation of the borough fund from the general district fund. These two funds were amalgamated by sect. 10 (1) of the R. & V.A., 1925 (*a*), as from the date when the first new valuation list under that Act came into force (*i.e.* either April 1, 1928, or April 1, 1929) into a general rate fund.

The borough council, acting as the rating authority, is also required to keep certain accounts (including a general rate fund account), but these are dealt with in the title RATE ACCOUNTS.

Sect. 185 of the L.G.A., 1933 (*aa*), provides that all receipts of a borough council, including rents and profits of all corporate land, shall be carried to the general rate fund and all liabilities be discharged there-out. Under sect. 187 (1), all payments to and out of the general rate fund shall be made to and by the treasurer. Payments out of this fund must be made in pursuance of an order of the council signed by three members and countersigned by the town clerk. [317]

(*a*) 14 Statutes 631.

(*aa*) See 26 Statutes 407.

The exceptions to this general rule are payments made :

- (a) In pursuance of the specific requirement of any enactment.
- (b) In pursuance of an order of a competent court or of a justice of the peace acting in discharge of his judicial functions.
- (c) In respect of any remuneration of :
 - (i.) the mayor ;
 - (ii.) the recorder in his capacity either of recorder or of judge of the borough civil court ;
 - (iii.) the stipendiary magistrate ;
 - (iv.) the clerk of the peace, when paid by salary ;
 - (v.) the clerk of the borough justices ;
 - (vi.) any other officer or person whose remuneration is payable by the council.
- (d) In respect of the remuneration and allowances certified by the Treasury to be payable to them in relation to an election petition.
- (e) In respect of the remuneration certified by the recorder to be due to an assistant recorder, assistant clerk of the peace, or additional crier (sect. 187 (2)) (b). **[318]**

As stated, the transactions to be entered in the account of the general rate fund may, and should, be classified according to the different services administered, and the following services are usually included under this heading :

Salaries and Establishment Expenses.

Municipal Elections.

Quarter Sessions, Assizes and Coroners' Inquisitions.

Police, Fire Brigade and Probation of Offenders.

Town Hall and Municipal Offices.

Parks and Recreation Grounds.

Markets.

Refuse Collection, etc., Sewerage and Sewage Treatment.

Highways and Streets and Public Lighting.

Maternity and Child Welfare, Sanatoria, Dispensaries, etc.

In other cases separate accounts are required to be kept by statute or order, *e.g.* Housing, Public Assistance, Education and Public Baths and Libraries, whilst in some cases it is the custom to keep separate accounts for services ordinarily included under the general rate fund, *e.g.* Police, Probation of Offenders, Sewage Farms and Markets. In all these cases, however, the separate accounts remain subsidiary to the general rate fund and any deficiencies will be chargeable thereto. This applies equally to the trading undertakings of an authority, *e.g.* Transport, Gas, Electricity and Water, the surplus or deficiency upon which accounts may be transferred in whole or in part to the general rate fund. Exceptions to the general rule are found in the Trust and Charity Funds often administered by municipalities. **[319]**

A differentiation must also be observed between county boroughs and non-county boroughs. The wider range of duties allocated by the legislature to the former results in a corresponding increase in the number of funds and accounts administered by them. For example county boroughs operate the following services, which in the case of a non-county borough would usually be administered by the county council : public assistance, lunacy and mental deficiency institutions, tuber-

culosis and venereal diseases treatment, motor taxation and main roads in their areas. [320]

Metropolitan borough accounts are similar in many respects to those of provincial boroughs, the differences being due to special enactments which are applicable to London in many cases. The L.C.C. is the authority in London for main drainage, education and fire brigade, whilst in connection with housing the clearance of large insanitary areas is also undertaken by the county council. Another important distinction is that borrowing by the metropolitan boroughs requires the sanction of the L.C.C., which latter advances the money also in the majority of cases. [321]

Power of Minister of Health to Prescribe Accounts.—Sect. 235 of the L.G.A., 1933 (*bb*), confers on the Minister of Health wide powers with regard to the form in which local authorities' accounts are to be made up. It is therein provided, *inter alia*, that the Minister may make regulations generally with respect to the preparation and audit of accounts which are subject to audit by a district auditor, including :

- (1) The financial transactions which are to be recorded in the accounts.
- (2) The mode of keeping the accounts of the authority and of their officers, and the form of those accounts.
- (3) The mode in which, if it is so prescribed, the accounts are to be certified by the authority or any officer of the authority.
- (4) The publication of information with respect to the audited accounts.
- (5) The making of an abstract of the accounts as audited.

It will be observed that this power does not extend to accounts not subject to district audit, but some borough councils have by local act or provisional order or by resolution under the powers conferred by the Municipal Corpns. (Audit) Act, 1933, or sect. 239 of the L.G.A., 1933 (which replaced the Municipal Corpns. (Audit) Act) (*c*), adopted the district audit for all accounts, in which case sect. 235 will apply to all accounts. The accounts of metropolitan boroughs are subject to district audit.

Similar powers to the above were available formerly to the Minister under the District Auditors Act, 1879 (*cc*), the whole of which is repealed by the L.G.A., 1933. The following are the more important orders dealing with accounts made under sect. 5 of the 1879 Act, still remaining in force :

- (1) *Housing Accounts Order (Local Authorities)*, 1920 (*d*).—This order sets out a list of prescribed ledger accounts to be opened and the method of treating the various transactions in the accounts. The forms of the various books to be used are also prescribed, and the memorandum accompanying the order contains explanatory matter regarding special points in connection with Housing (Assisted Scheme) Accounts.
- (2) *Financial Statements Order*, 1921 (*e*).—A new form of financial statement was prescribed hereunder, to be used for the purpose of arriving at the amount of stamp duty payable at audit.
- (3) *Accounts (Payment into Bank) Order*, 1922 (*f*).—Every officer paying money into the bank on behalf of the local authority

(*bb*) 26 Statutes 432.

(*cc*) 10 Statutes 571 *et seq.*

(*e*) S.R. & O., 1921, No. 1902.

(*c*) *Ibid.*, 290, 434.

(*d*) S.R. & O., 1920, No. 487.

(*f*) S.R. & O., 1922, No. 1404.

is required by this order to keep a duplicate of the paying-in slip. In addition some note must be made on the slip and counterfoil in respect of each cheque, in order to identify the latter with the debt in discharge of which it was received.

(4) *The Rate Accounts (R.D.C.) Order, 1926, and The Rate Accounts (Borough and U.D.C.) Order, 1926 (ff).* (See title RATE ACCOUNTS.)

(5) *The Local Authorities (Audit) Order, 1928 (g).* (See title AUDIT.)

(6) *The Accounts (Boroughs and Metropolitan Boroughs) Regulations, 1930 (g),* which are dealt with immediately below.

[322]

The Accounts (Boroughs and Metropolitan Boroughs) Regulations, 1930 (h).—These regulations were made in January, 1930, and came into force on April 1, 1930. They apply to all accounts of Metropolitan boroughs and to those accounts of provincial boroughs which are subject to district audit. In the case of a county borough, the regulations are applicable also to the public assistance accounts dealing with the poor law functions transferred under the L.G.A., 1929 (i), so far as they continue to be administered under the provisions of the Poor Law Act, 1930 (j) (formerly the Poor Law Act, 1927). Where the power of giving assistance under alternative enactments is exercised by the council, the regulations will not apply unless all the borough accounts are subject to district audit. Although not directly applicable to boroughs whose accounts are not subject to the Government audit, the majority of such boroughs have adopted the principles laid down in the regulations in whole or in part.

The chief financial officer is made responsible for the punctual keeping of a balancing system of double entry ledger accounts, which must include personal accounts, impersonal accounts, final accounts and balance sheet.

Personal Accounts.—The prescribed personal accounts include a cash book for recording the council's bank transactions, *i.e.* sums received on behalf of the council by their bankers, and payments ordered to be made thereout. When the account is balanced, a reconciliation statement as between pass book and cash book is to be prepared.

An account must be kept in respect of each officer who collects, receives or disburses money or stores and materials on behalf of the council, and personal accounts must also be opened in respect of debtors during the year.

It is provided, however, that where primary records can conveniently be classified, totals only may be posted in the personal accounts, which thus become total or "control" accounts, and must agree in total with the details contained in the primary records. [323]

Impersonal Accounts.—Accounts of income and expenditure hereunder are to be set up for each heading of account as appearing in the annual epitome of accounts, or other return required to be furnished to the Minister, with such further classification as may be deemed desirable by the council. In all cases, however, the income and expenditure in connection with the following must be shown separately :

(ff) S.R. & O., 1926, Nos. 1123 and 1178.

(g) S.R. & O., 1928, No. 177.

(h) S.R. & O., 1930, No. 30.

(i) 10 Statutes 883 *et seq.*

(j) 12 Statutes 968 *et seq.*

- (a) Each head of account.
- (b) Each area of charge.
- (c) Each institution.
- (d) Each work chargeable to loan or capital account.
- (e) Each work or service the cost of which is chargeable to other persons.

The accounts must include all items of income and expenditure which fall due within or at the close of the year. [324]

Final Accounts.—Final accounts are necessary in respect of revenue and capital, and in the former case must bring out a balance between the income and expenditure of :

- (a) The general rate fund.
- (b) Each undertaking or service where a separate account is by law required or is needed for the purpose of the council.
- (c) Each part of the borough for which a separate account is needed.
- (d) Each reserve, pension or other fund of which continuous account has to be kept.

Income and expenditure are to be shown gross, except where a "contra" entry is necessary to correct an overstatement. In the case of trading undertakings, the final account may be divided into a revenue and net revenue account.

The capital section must contain the following accounts :

- (a) Capital Asset Accounts, containing a correct record of each work or property treated as a capital asset.
- (b) A Capital Provisions Account, showing the provision made other than by loan towards the cost of capital assets, *e.g.* sinking funds, revenue contributions, and in some cases loans redeemed.
- (c) A Deferred Charge Account in respect of loan expenditure other than that included in a capital asset account showing the extent to which it remains to be provided out of revenue.
- (d) A Capital Receipts Account, showing receipts of a capital nature other than loan receipts.
- (e) An account of each fund provided for the purpose of loan repayment.

Where capital assets are not realisable, the capital provision in respect thereof is to be shown separately, and where any capital asset passes out of the council's possession or ceases to be serviceable, an amount equal to the cost is to be written off the capital asset account, and the capital provisions account reduced by the appropriate amount included therein in respect of the asset. Any loan outstanding in connection with such an asset is to be treated as a deferred charge until redeemed. Records must be kept showing the operation of this provision in order to ensure its due observance. [325]

Balance Sheet.—Balance sheets must be prepared showing the assets and liabilities, and the financial position of each of the funds or revenues of the council at the close of the year. Where there is more than one balance sheet, an aggregate balance sheet must be entered in the ledger, and in all cases the capital and revenue sections must be balanced separately. Liabilities and fund surpluses on the one side, and assets and fund deficiencies or deferred charges on the other, must be clearly distinguished. [326]

Primary Records and Accounts.—The regulations prescribe in some

detail the primary records necessary to provide the material for posting the ledger. Collecting and disbursing officers are each to keep detailed records of the moneys passing through their hands, and accounts must be kept for debtors in respect of credit income, together with a separate account of each source of income. All sums due to the council must be recorded in the credit income accounts, which must show a detailed record of how the items are dealt with, and interlock with the collecting officer's accounts and appropriate debtors' accounts. [327]

Expenditure and Cost Accounts.—The primary records must provide such information as is necessary properly to classify the council's expenditure in the ledger and to charge debtors with the correct cost of recoverable works. For this purpose time-sheets and wages-sheets or books must be used in respect of workmen's wages and a summary wages classification prepared to show the charge in respect of each work or service. This classification is to bring out a total agreeing with the gross wage charge during the period.

With regard to subsidiary services such as the daily services of horses, rollers, vehicles, etc., such records must be kept as will enable the cost to be properly charged or apportioned.

The regulations provide for detailed stores accounts showing quantities received into store, issued from store, returned to store, and remaining in store. The detailed stores accounts are to be controlled by a total account showing stores transactions as above in total, the two sets of accounts being maintained in agreement. A stocktaking return must be used showing side by side book quantities and actual quantities of stores, the two being brought into agreement by such adjustments as appear to accord with the facts after the cause of the difference has been properly investigated. [328]

Loan and Capital Accounts.—The following records must be kept under this heading :

- (1) A tabular and summarised account of each group of stockholders, mortgagees, annuitants and other lenders to whom debts of the same order are owing.
- (2) A statement as to borrowings, showing :
 - (a) the date, authority, purpose, period and amount of each borrowing power ;
 - (b) the amount borrowed in each year in respect of each borrowing power ;
 - (c) the amount repaid during the year and the amount outstanding ; and the sinking fund (if any) held at the end of the year.
- (3) A statement showing in respect of each capital asset or deferred charge the exact correspondence of the balance connected therewith at the end of each year.
- (4) A record of each sinking or redemption fund for the discharge of loan debt showing year by year in parallel columns :
 - (a) the total amount of debt repaid out of the fund to the end of the year ;
 - (b) the amount remaining in the fund invested or uninvested,
 together with any other information necessary for the compilation of any return required to be made to the Minister.

Where accounts of a borough council are subject in part only to

audit by the district auditor, the part subject to such audit must be kept in a separate set or sets of books. Any accounts and records relating to transactions which concern that part in common with the part not subject to district audit, must also be submitted to the district auditor.

The first schedule to the regulations explains that the final ledger accounts should be presented for audit permanently bound in a volume, of which each folio or page should bear a consecutive number.

The second schedule deals with the accounting treatment of "general loans," *i.e.* loans raised by mortgage or bonds available in law for all or any statutory borrowing powers, or such borrowing powers under a particular enactment. A separate cash account must be kept recording receipt, application and repayment of such loans, and any borrowing power exercised is to be treated as an advance therefrom to the appropriate fund. A register of all such advances must be kept. Interest on general loans must be apportioned between the various borrowing accounts on the basis of advances outstanding at the beginning or end of the year, allowance being made for part periods. Sinking fund accumulations must be shown as balances unapplied on the various fund balance sheets, unless repaid to the general loans account, when they become available for loan redemption or new capital purposes, and are treated as having been repaid by the original borrowing fund. [329]

Date of Closing Accounts.—Under sects. 223 and 240 of the L.G.A., 1933 (*k*), all accounts of a borough council must now be made up yearly to March 31 in each year, or such other date as the Minister of Health directs, or the council, with the consent of the Minister, may determine. Sect. 26 of the Municipal Corpns. Act, 1882, which required accounts to be made up half-yearly is repealed by the L.G.A., 1933. [330]

Publication of Accounts. (1) *Abstract of Accounts.*—Sect. 240 (*c*) of the L.G.A., 1933 (*k*), provides that after the audit of the accounts for each financial year the treasurer of the borough shall print an abstract of such of the accounts for that year as are not subject to district audit. Sect. 235 empowers the Minister of Health to make regulations as to the making of an abstract of accounts as audited in cases where the district audit applies. Apart from publication, the accounts of the council and of their treasurer must be open to the inspection of any member of the council, who may make a copy of them or extract therefrom (sect. 283 (3)) (*l*).

Most borough councils have availed themselves to the fullest extent of their powers to publish an abstract of their accounts, and many of the abstracts now published present a comprehensive summary of the whole of the council's financial transactions for the period covered. It may be observed that such a publication provides a convenient means of conveying to the ratepayers information concerning the council's financial position and activities, since any local government elector of the borough is entitled to inspect the same without payment, and copies are required to be delivered to any such elector on payment of a reasonable sum for each copy (sect. 283 (4)) (*l*).

It is customary, therefore, to find very full and complete expositions of accounts and statistics in these publications, which normally contain the following sections :

(*k*) 26 Statutes 427, 435.

(*l*) *Ibid.*, 455.

- (a) Introductory preface by the chief financial officer pointing out the main features of the accounts, and directing attention to any important developments.
- (b) Revenue accounts, capital accounts and balance sheets for the various funds of the council, including the general rate fund. A net revenue account and net revenue appropriation account is usually included in the trading undertaking accounts.
- (c) Accounts in respect of special funds, *e.g.* rating authority accounts, trusts and charities.
- (d) Loan tables showing details of borrowing powers, sanctions exercised, repayments and loans outstanding.
- (e) Other statistics, such as area, rateable value, population, charges for commodities, comparative statements, and an index.

Opportunity is often taken to extend the scope of the publication to provide useful statistics regarding the authority. Diagrams showing pictorially the growth of loan debt, the proportions of the authority's net expenditure borne by rates and taxes respectively, and the rateable capacity of the area, which are often included, are instances in point. No regulations have been made prescribing the form which an abstract is to take, and it will thus be found that no two books are quite similar in design or in the setting out of the information contained. This makes it difficult to compare the transactions of one authority with those of another. [331]

(2) *Epitome of Accounts*.—In view of the complexity and extent of the accounts of the more important boroughs, there has evolved a practice in recent years for such authorities to issue a small booklet, called an *Epitome of Accounts*, which shows the finances and statistics of the authority in condensed form. These publications should not be confused with the *Epitome of Accounts* rendered annually to the Minister of Health. These booklets contain only the "key" figures of the accounts, and are published with the object of providing the layman, who might otherwise be confused by the more complex *Abstract of Accounts*, with information concerning the authority in "tabloid" form. Such an epitome would usually consist of the following:

- (1) Statistics showing area, population, rateable values, rates levied, loan debt, etc., with comparative figures for previous years.
- (2) A summary of the total income and expenditure of the council, also with comparative figures.
- (3) Tables showing the cost in terms of rate poundage, of the various rate services, showing the amount borne by rates and by taxes.
- (4) A summary of the income and expenditure of the trading undertakings and the disposal of surpluses and deficiencies.
- (5) Details of loan debt outstanding and redeemed, and capital expenditure divided between productive and non-productive purposes.
- (6) An aggregate balance sheet.

In some cases a short report or preface is included directing attention to the more important particulars, and pointing out conclusions which may be drawn therefrom. It is often referenced to the relative parts of the *Abstract of Accounts* where more detailed information is available. Brevity is the essence of these publications, however, and they are usually limited to twenty or twenty-four pages. [332]

Financial Returns.—The duty of making a return of income and expenditure yearly to March 31 to the M. of H. is laid on every local
L.G.L. II.—11

authority by sect. 244 of the L.G.A., 1933 (*m*). Any person in default is liable on summary conviction to a fine not exceeding £20, and notwithstanding the recovery of any such fine, the making of the return may be enforced, at the instance of the Minister, by *mandamus*. Similar provisions contained in the Municipal Corpn's. Act, 1882, and the Local Taxation Returns Acts, 1860 and 1877, were repealed by the above Act.

This return is known as the Epitome of Accounts, and must be compiled from the accounts for the year ended March 31 on forms supplied by the M. of H., detailed instructions as to the method of compilation also being supplied. A return need not, unless the Minister requires, be made of income and expenditure included in accounts subject to district audit, if a copy of the financial statement relating to those accounts is sent to the Minister, and the financial statement is to be deemed the return (sect. 244 (5)). The return contains the following :

- (1) *Table A.—General Statistics*, showing population, rateable value, rates levied, produce of *ld.* rate, etc.
- (2) *Table B.*—Provides for the income and expenditure on the main services of the general rate fund, including elementary and higher education, police, housing, highways, etc. Expenditure is divided between loan charges, revenue contributions to capital expenditure, and general expenditure and income as between amounts received from the county council, Government grants and other income. The net expenditure on income is extended and the equivalent rate in the £ shown.
- (3) *Table C.*—Shows income and expenditure on each trading fund, including details as to the disposal of any balance at the end of the year, *e.g.* carried forward, transfers to or from rates, etc.
- (4) *Table D.*—Deals with special funds, including sinking and redemption funds, trust and charity funds and reserve funds.
- (5) *Table E, Aggregate Rate Fund Account.*—Includes the net expenditure from Table B, transfers to and from rates shown in Table C and other income and expenditure of the council during the year, together with the equivalent rate poundages.
- (6) *Table F.*—Provides for a summary to be given of the loan and capital transactions during the year.
- (7) *Table G.*—Refers to the Government grants received during the year analysed under the services for which received.

The Epitome of Accounts shows in summarised form the whole of the council's financial activities during the year under review, and the M. of H. Annual Report contains the figures for the whole country as abstracted from these returns. Many authorities publish the epitome as part of their abstracts of accounts, and the headings utilised therein are occasionally used as the basis of the headings in the accounts and abstract, thus facilitating the preparation of the return, whilst its standardised form assists in the comparison of costs and statistics relating to services in different towns. [333]

Sect. 199 of the L.G.A., 1933 (*n*), provides for a return of sinking or redemption funds, or other provision for the repayment of moneys borrowed by the council of a county, borough, district or parish being made to the Minister of Health on request. This provision follows the course adopted in recent local Acts authorising the borrowing of money, of making the duty of transmitting a return depend on the

receipt of a request for it from the Minister. The older form of clause in a local Act required a return to be furnished annually. It should be observed that sect. 199 of the Act of 1933 extends to returns of all moneys borrowed by any of the councils above mentioned, whether under a public general Act, or a local Act, or any order, rule or regulation, and that the section takes effect in substitution for any similar requirement in any such Act or statutory order (o), with the result that the existing requirement is repealed. The return is required to contain such particulars and to be made up to such date as the Minister may require. It must be certified by the treasurer or other person whose duty it is to keep the accounts of the authority, and, if the Minister so requires, is to be verified by a statutory declaration. A Government department also invariably requires a return as the basis of a claim to grant in cases where a Government grant is given, this being usually a condition of grant. Examples in point include Education Substantive Grant, Unemployment Scheme Grants, Housing Grants, etc. [334]

London.—The position in London is dealt with in the body of this title, as Part X. of the L.G.A., 1933, relating to Accounts and Audit, applies to London (sect. 243) (p); as also does Part XI. relating to Local Financial Returns, the expression "local authority" including a metropolitan borough council and the Common Council of the City of London (sect. 248) (q). (See also *ante*, p. 156.) [335]

(o) Defined in L.G.A., 1933, s. 305.

(p) 26 Statutes 437.

(q) *Ibid.*, 439.

BOROUGH ALDERMAN

See ALDERMEN.

BOROUGH AUDITORS

See AUDITORS.

BOROUGH BRIDGES

See BRIDGES.

BOROUGH COUNCILLOR

	PAGE		PAGE
1. INTRODUCTION - -	164	4. PROCEEDINGS IN RESPECT OF DISQUALIFICATION - -	168
2. QUALIFICATIONS FOR OFFICE -	165	5. DISABILITY FOR VOTING—INTEREST IN CONTRACTS -	170
3. DISQUALIFICATIONS FOR OFFICE	165	6. EXEMPTION FROM OFFICE -	172
(a) Aliens and Infants - -	165	7. ACCEPTANCE OF OFFICE -	172
(b) Bankruptcy - -	165	8. TERM AND TENURE OF OFFICE	173
(c) Conviction for Offence -	166	9. VACATION OF OFFICE -	173
(d) Corrupt or Illegal Practices-	166	Resignation - -	173
(e) Office of Profit - -	166	Absence - -	173
(f) Official Persons - -	167	10. REMOVAL FROM OFFICE -	174
(g) Poor Relief - -	167	11. LONDON - -	175
(h) Royal Forces - -	168		
(i) Surcharge - -	168		

See also titles : COUNTY COUNCILLOR ;
DISTRICT COUNCILLOR ;
ELECTIONS ;
METROPOLITAN BOROUGH.

1. **Introduction.**—A borough council consists of the mayor, aldermen and councillors, and as such it discharges the functions of the municipal corp'n. of the borough, which consists of the mayor, aldermen and burgesses of the borough, or if the borough is a city, the mayor (or lord mayor), aldermen and citizens of the city (*a*).

Before June 1, 1934, the law governing the qualification and election of borough councillors was for the most part contained in the Municipal Corpn. Act, 1882 (*b*), but these provisions are repealed and re-enacted in the L.G.A., 1933. In a few instances, the law has been amended by the Act of 1933, and special attention will be drawn to any such amendment.

The office of councillor is one of credit or honour and not of profit (*c*) ; it is a public office of trust and words imputing dishonesty or malversation in office are actionable *per se* (*d*).

Borough councillors are elected by the local government electors for the borough (*e*), and unless the election is one to fill a casual vacancy, the election takes place on November 1 (*f*).

The number of councillors is fixed by the charter of incorporation (*g*), but if the area of the borough has been altered by a local Act or order, the number of councillors originally fixed would probably have been altered by the Act or order, and the number may also be altered by Order in Council on petition founded upon a resolution of a majority of the whole number of members of the council (*gg*).

(*a*) L.G.A., 1933, s. 17 ; 26 Statutes 313.

(*b*) 10 Statutes 576 *et seq.*

(*c*) *Alexander v. Jenkins*, [1892] 1 Q. B. 797 ; 32 Digest 44, 463.

(*d*) *Booth v. Arnold*, [1895] 1 Q. B. 571 ; 32 Digest 44, 464.

(*e*) L.G.A., 1933, ss. 23 (1), 26 (1) ; 26 Statutes 316, 318 ; Representation of the People Act, 1918, ss. 3, 42, Sched. VI., para. 3 ; 7 Statutes 550, 572, 588.

(*f*) L.G.A., 1933, s. 23 (3) ; 26 Statutes 317.

(*g*) *Ibid.*, s. 131 ; *ibid.*, 375.

(*gg*) *Ibid.*, s. 25 ; *ibid.*, 317.

There is one election of councillors for the whole borough, if it is not divided into wards. Where there are wards, there is a separate election for each ward (*h*).

As to the election of a borough councillor, see the title ELECTIONS. [336]

2. Qualifications for Office.—A person unless legally disqualified by virtue of the Act of 1933 or other enactment (see *post*), is qualified to be elected a councillor if he is of full age and a British subject ; and

(1) he is registered as a local government elector for the borough ; or

(2) he owns freehold or leasehold land within the borough ; or

(3) he has during the whole of the twelve months preceding the day of election resided in the borough (*i*).

A person ceasing to hold office as borough councillor is eligible for re-election, unless he is not qualified or is disqualified (*k*). [337]

3. Disqualifications for Office.—The following persons are by sect. 59 of the L.G.A., 1933, disqualified for being elected or being a borough councillor, or mayor or alderman. In the later passages of this Article, the phrase " member of the council " is used to cover a mayor or alderman as well as a councillor.

(a) *Aliens and Infants.*—Persons who are not British subjects nor of full age are not qualified (*l*). [338]

(b) *Bankruptcy.*—A person who has been adjudged bankrupt or has made a composition or arrangement with his creditors is disqualified (*m*).

The disqualification arising from bankruptcy ceases when the bankruptcy is annulled either on the ground that the person ought not to have been adjudged bankrupt, or that his debts have been paid in full, on the date of the annulment ; or when the court grants his discharge with a certificate that the bankruptcy was caused by misfortune with no misconduct, on the date of his discharge. In other cases disqualification ceases at the end of five years from the date of discharge (*n*).

Disqualification arising from a composition or arrangement with creditors ceases on the day on which the person's debts are paid in full, or in any other case at the end of five years from the date of fulfilment of the deed of composition or arrangement (*o*).

These provisions reproduce in a more intelligible form provisions contained in sect. 39 of the Municipal Corpn. Act, 1882 (*p*), sect. 32 of the Bankruptcy Act, 1883 (*q*), and sect. 9 of the Bankruptcy Act, 1890 (*r*).

A person whose total indebtedness does not exceed £50 and whose estate is being administered by the county court under sect. 122 of the Bankruptcy Act, 1883 (*s*), should not be regarded as adjudged bankrupt (*t*), but should be treated as a person who has made an arrangement with his creditors (*u*).

(*h*) L.G.A., 1933, s. 24 ; 26 Statutes 317 ; *ibid.*, 333.

(*i*) *Ibid.*, s. 57.

(*k*) *Ibid.*, s. 58 ; *ibid.*, 334.

(*l*) Representation of the People Act, 1918, ss. 3, 9 (3) ; 7 Statutes 550, 554 ; L.G.A., 1933, s. 57 ; 26 Statutes 333.

(*m*) L.G.A., 1933, s. 59 (1) (b) ; *ibid.*, 334.

(*n*) *Ibid.*, s. 59 (1) (ii.) ; *ibid.*, 335.

(*o*) *Ibid.*, s. 59 (1) (iii.) ; *ibid.*

(*p*) 10 Statutes 590.

(*q*) 1 Statutes 581.

(*r*) *Ibid.*, 586.

(*s*) *Ibid.*, 583.

(*t*) *Lowe v. Lowrie* (1902), 18 T. L. R. 553 ; 4 Digest 177, 1644.

(*u*) *Bradfield v. Cheltenham Union*, [1906] 2 Ch. 371 ; 5 Digest 1190, 9610.

A person disqualified by bankruptcy cannot properly resign his office as councillor (*a*).

An arrangement with creditors made by a firm disqualifies all the partners (*b*). [339]

(*c*) *Conviction for Offence*.—Persons are disqualified who within five years before the day of election or since election have been convicted in the United Kingdom, the Channel Islands or the Isle of Man, of any offence and ordered to be imprisoned for not less than three months without the option of a fine (*c*).

The date of the conviction is deemed to be the date on which the time for appeal expires, or if an appeal is made the date on which the appeal is disposed of or is abandoned or fails for non-prosecution (*d*).

This is a new provision. Sect. 2 of the Forfeiture Act, 1870 (*e*), put out of office any councillor convicted of treason or felony, and sentenced to imprisonment with hard labour for over 12 months, or a greater punishment. But it is not clear that the last portion of the section disqualified any such person from again being elected a borough councillor.

The new provision is founded on sect. 46 (1) (*c*) of the L.G.A., 1894 (*f*), applying to members of district and parish councils, but drafting amendments have been made. Thus in view of the difficulty of proving a conviction abroad, and of the uncertain effect of the extension of the provision to convictions in the Dominions or foreign countries due to the variations in penal codes, convictions which will disqualify are restricted to those in the United Kingdom, the Channel Islands or the Isle of Man. A conviction in the Irish Free State will not disqualify, because under sect. 2 (2) of the Royal and Parliamentary Titles Act, 1927 (*g*), the expression "United Kingdom," as used in the Act of 1933, means Great Britain and Northern Ireland.

A free pardon by the Sovereign removes all the consequences of a conviction for an offence (*h*), and sect. 59 of the Act of 1933 contains no reference to the exemption from disqualification of a person to whom a pardon had been granted. [340]

(*d*) *Corrupt or Illegal Practices*.—A person is disqualified if he is disqualified for being elected or being a member of a local authority under any enactment relating to corrupt or illegal practices (*i*). [341]

(*e*) *Office of Profit*.—A person who holds any paid office or other place

(*a*) *Hardwick v. Brown* (1873), L. R. 8 C. P. 406 ; 33 Digest 48, 287.

(*b*) *Ward v. Radford* (1895), 59 J. P. 632 ; 5 Digest 1190, 9611.

(*c*) L.G.A., 1933, s. 59 (1) (*c*) ; 26 Statutes 334.

(*d*) *Ibid.*, s. 59 (1) (*v*) ; 335.

(*e*) 4 Statutes 648. Repealed by the L.G.A., 1933, so far as it relates to members of local authorities.

(*f*) 10 Statutes 804.

(*g*) 3 Statutes 191.

(*h*) *Hay v. Tower Justices* (1890), 24 Q. B. D. 561 ; 30 Digest 25, 163.

(*i*) L.G.A., 1933, s. 59 (1) (*f*) ; 26 Statutes 334. As to corrupt practices at a parliamentary election, see Corrupt and Illegal Practices Prevention Act, 1883 ; 7 Statutes 465 ; Representation of the People Act, 1918, s. 22 ; 7 Statutes 561.

As to corrupt practices at municipal elections, see Municipal Elections (Corrupt and Illegal Practices) Act, 1884, ss. 2, 3 (2), 8 (2) ; 7 Statutes 511, 512, 514 ; Municipal Elections (Corrupt and Illegal Practices) Act, 1911 ; 7 Statutes 546.

As to corrupt practices of soliciting or receiving gifts as an inducement to do or to forbear to do anything in respect of any transaction in which a public body is concerned, see Public Bodies Corrupt Practices Act, 1889 ; 4 Statutes 718 ; Prevention of Corruption Act, 1916 ; 4 Statutes 841.

of profit (other than that of mayor or sheriff) in the gift or disposal of the council, or of any committee of the council, is disqualified (*j*).

A paid officer of a local authority who is employed under the direction of a committee or sub-committee of the authority, any member of which is appointed on the nomination of some other local authority, is disqualified for being elected or being a member of that other local authority (*k*).

This last provision in effect reproduces sect. 7 of the Poor Law Act, 1930 (*l*), and will disqualify an officer serving under the direction of a guardians committee from becoming a member of a council by whom members of the guardians committee are nominated. The sub-sect. would also similarly disqualify an officer of a joint hospital committee from becoming a member of any council nominating or appointing members of the joint hospital committee (*m*). [342]

A roadman employed by a local authority holds a paid office (*n*).

(*f*) *Official Persons*.—The recorder of a borough is disqualified to be a member of the council of the borough for which he is recorder (*o*).

An elective auditor is disqualified to be a member of the council of the borough for which he is auditor (*p*), but the mayor's auditor, on the other hand, must be a member of the borough council (*q*).

The coroner of a borough, or a deputy-coroner of a borough, is disqualified to be a member of the council of that borough (*r*).

Teachers in a school maintained but not provided by a borough council as the local education authority are in the same position as respects disqualification as councillors as teachers in a school provided by the borough council (*s*), that is to say they are to be regarded as officers of the borough council and therefore disqualified to be members of the council of that borough. [343]

(*g*) *Poor Relief*.—A person is disqualified if he has within twelve months before the day of his election or since his election received poor relief (*t*).

A person is not so disqualified by reason only that he, or a member of his family, has received medical or surgical treatment, or has been an inmate of an institution for the purpose of receiving such treatment, or has received relief which could have been granted under the Blind Persons Act, 1920 (*u*).

In so far as these provisions disqualify a recipient of poor relief to be a member of the council of a non-county borough, they represent new law. Sect. 10 of the L.G.A., 1929 (*a*), disqualified for membership of a county borough council a person who had received poor relief, but there was no corresponding provision extending to a member of a non-

(*j*) L.G.A., 1933, s. 59 (1) (*a*); 26 Statutes 334.

(*k*) *Ibid.*, s. 59 (2); *ibid.*, 336.

(*l*) 12 Statutes 973.

(*m*) See *Greville-Smith v. Tomlin*, [1911] 2 K. B. 9; 33 Digest 10, 14.

(*n*) *R. v. Davies, Ex parte Penn* (1932), 96 J. P. 416; Digest (Supp.).

(*o*) L.G.A., 1933, s. 59 (3); 26 Statutes 336.

(*p*) *Ibid.*, ss. 59 (1) (*g*), 237 (2); *ibid.*, 334, 433. See also s. 84 (8).

(*q*) *Ibid.*, s. 237 (3); *ibid.*, 433.

(*r*) *Ibid.*, s. 59 (4); *ibid.*, 336.

(*s*) *Ibid.*, s. 59 (5); *ibid.*, 337, reproducing para. 2 of Part III. of First Schedule to Education Act, 1921; 7 Statutes 218; repealed by the Act of 1933, except as to London.

(*t*) *Ibid.*, s. 59 (1) (*c*); 26 Statutes 334.

(*u*) *Ibid.*, s. 59 (1) (*iv.*); *ibid.*, 335; for the Blind Persons Act, 1920, see 20 Statutes 593.

(*a*) 10 Statutes 890, repealed, except as to London, by L.G.A., 1933.

county borough council, although recipients of poor relief were disqualified as members of district councils and parish councils by sect. 46 of the L.G.A., 1894 (*b*). Relief given by way of loan under sect. 49 of the Poor Law Act, 1930 (*c*), will disqualify (*d*), and it follows that a repayment of the amount or value of poor relief afforded would not remove the disqualification. Under sect. 18 of the Poor Law Act, 1930 (*e*), relief given to or on account of a wife is to be considered as given to her husband, and relief given to or on account of a child under 16 (not being blind or deaf and dumb) is to be considered as given to the father of the child or the husband of the mother of the child, or if the mother is unmarried or a widow, to the mother of the child, as the case may be. The person thus deemed to be constructively receiving the relief would therefore become subject to disqualification under sect. 59 of the Act of 1933. A proviso has been included in sect. 300 of the Act exempting from disqualification, until he next retires from office, any member of a borough council in office on June 1, 1934, by reason of any circumstance which occurred before that day and which would not have given rise to a disqualification under the law as it existed before the Act of 1933 was passed. Relief granted before June 1, 1934, will not therefore cause an existing member of the council of a non-county borough to become disqualified. But as this provision takes effect only during his present term of office, he would be disqualified by sect. 59 (1) (*c*) of the Act, upon submitting himself for re-election, if poor relief had been received within 12 months before the day of election. [344]

(*h*) *Royal Forces*.—An officer of the regular forces (Military, Air) on the active list is disqualified (*f*), but an officer of the auxiliary forces (including the Territorial Army) is not disqualified (*g*). [344A]

(*i*) *Surcharge*.—Surcharge by a district auditor to an amount exceeding £500 within five years before the day of election or since his election disqualifies the person surcharged (*h*).

The date of the surcharge is deemed to be the date on which the time for appeal or application expires, or if an appeal or application is made the date on which the appeal or application is disposed of or is abandoned or fails for non-prosecution (*i*). [345]

4. Proceedings in Respect of Disqualification.—If a member of a borough council was disqualified on election the appropriate procedure is to present an election petition under sect. 87 of the Municipal Corpn. Act, 1882 (*k*), on the ground that the member was at the time of election disqualified, and that he was not duly elected by a majority of lawful votes. See the title ELECTION PETITION.

But under sect. 88 (4) of the Municipal Corpn. Act, 1882 (*l*), a petition must ordinarily be presented within 21 days after the day of election, and where a member has acted as such when disqualified, proceedings may be instituted by a local government elector of the borough either in the High Court or in a court of summary jurisdiction

(*b*) 10 Statutes 804.

(*c*) 12 Statutes 992.

(*d*) *Chard v. Bush*, [1923] 2 K. B. 849; 37 Digest 205, 30.

(*e*) 12 Statutes 979.

(*f*) Army Act, s. 146; Air Force Act, s. 146; 17 Statutes 211, 384.

(*g*) Army Act, s. 181 (5); 17 Statutes 235; Air Force Act, s. 181 (5); 17 Statutes 404; see also *post*, p. 172.

(*h*) L.G.A., 1933, s. 59 (1) (*d*); 26 Statutes 334.

(*i*) *Ibid.*, s. 59 (1) (*v*.); *ibid.*, 335.

(*k*) 10 Statutes 599.

(*l*) *Ibid.*, 600.

under sect. 84 of the L.G.A., 1933. Such proceedings cannot be taken after the expiration of six months from the date on which the person so acted (*m*). [346]

If such proceedings are taken in the High Court the court may make a declaration that the defendant has acted while disqualified and may declare the office vacant; may grant an injunction restraining the defendant from so acting; and may impose a fine not exceeding £50 for each occasion on which he so acted (*n*).

If the proceedings are taken in a court of summary jurisdiction, the court has power on conviction to impose a fine not exceeding £50 for each occasion on which he so acted (*o*). But if the court is satisfied that the case would be more properly dealt with in the High Court, it must order the discontinuance of proceedings before it (*p*). [347]

Within fourteen days of the service of a summons upon him, a defendant may apply to the High Court for the matter to be dealt with by it, and if satisfied that the matter can be more properly dealt with in the High Court than in a court of summary jurisdiction the High Court may make an order (not subject to appeal) requiring the court of summary jurisdiction to discontinue the proceedings (*q*).

Where in proceedings instituted in the High Court under sect. 84 of the Act of 1933, it is proved that the defendant claims to act as a member of the council, and is disqualified for so acting, the court may make a declaration to that effect; may declare the office vacant; and may grant an injunction restraining him from so acting (*r*). [348]

Proceedings under sect. 84 can only be instituted by a local government elector for the area of the local authority (*s*).

The only proceedings which can be taken against a disqualified person on the ground that he has acted or has claimed to be entitled to act as a member of a local authority are such proceedings as are authorised by sect. 84 and have already been referred to. Proceedings by way of an information in the nature of a *quo warranto* or otherwise can no longer be taken (*t*). [349]

In the Report of the Chelmsford Committee (*u*), it is stated that sect. 84 is limited to cases in which the alleged disqualification arises after the date of the member's election, and that any disqualification existing at the date of election should be dealt with by an election petition.

For the purposes of sect. 84, sub-sect. (7) of the section provides that a person is deemed to be disqualified for acting as a member of a borough council, if he is not qualified to be or is disqualified for being, a member of the council, or by reason of failure to make and deliver the declaration of acceptance of office within the period required, resignation, or failure to attend meetings of the council, he has ceased to be a member of the council (*a*). [350]

The view of the scope of sect. 84 expressed by the Chelmsford Committee is supported by sect. 71 of the Act providing that an election, unless questioned by an election petition within the period fixed by law, shall be deemed to have been to all intents a good and valid

(*m*) L.G.A., 1933, s. 84 (1); 26 Statutes 350.

(*n*) *Ibid.*, s. 84 (2) (*a*).

(*p*) *Ibid.*, s. 84 (3) (*a*).

(*r*) *Ibid.*, s. 84 (4).

(*t*) *Ibid.*, s. 84 (6), by which the Municipal Offices Act, 1710 (13 Statutes 415), is repealed.

(*u*) Cmd. 4272, p. 30, para. 57.

(*o*) *Ibid.*, s. 84 (2) (*b*).

(*q*) *Ibid.*, s. 84 (3) (*b*).

(*s*) *Ibid.*, s. 84 (5).

(*a*) L.G.A., 1933, s. 84 (7).

election. Nevertheless, as sect. 59 disqualifies *for being* a member of a borough council, as well as *for being elected* as such a member, a person who is under one of the disqualifications mentioned in the section, difficult questions may arise where the act causing the disqualification was not completed before the election and has continued since the election. It is clear that the receipt of poor relief since the election will create an additional disqualification, where relief was also received within 12 months before the election, but whether a person who held an office of profit at the date of his election as a member of the council and continues to hold it after his election, is liable to proceedings under sect. 84 for acting in the office while disqualified is a point on which opinions may well differ. If no election petition has been presented, his election must under sect. 71 of the Act be treated as a good and valid election, but it does not follow that he may act as a member of the council, since he is disqualified by sect. 59 for being a member, as well as for being elected, and sect. 84 (7) provides that a person is disqualified for acting as a member of the council if he is not qualified or disqualified for being such. [351]

5. Disability for Voting—Interest in Contracts (b).—A member of a borough council, present at a meeting of the council, who has any direct or indirect pecuniary interest in any contract or proposed contract or other matter which is under consideration, must at once disclose the fact, and he must not take part in the consideration or discussion of, or vote on, any question with respect to the contract or other matter.

Failure to disclose such pecuniary interest renders the member liable to a fine not exceeding £50 on summary conviction, unless he proves that he did not know that a contract, proposed contract, or other matter in which he had pecuniary interest was the subject of consideration at the meeting, but a prosecution is not to be instituted except by or on behalf of the Director of Public Prosecutions.

A member of a council may, without disability, have an interest in a contract or other matter as a ratepayer or inhabitant of the area, or as an ordinary consumer of gas, electricity, or water, or in any matter relating to the terms on which the right to participate in any service, including the supply of goods, is offered to the public.

A person is to be treated as having an indirect pecuniary interest in a contract if he, or any nominee of his, is a member of a company or other body with which the contract is made or proposed, or who has a direct pecuniary interest in the other matter under consideration. But membership of or employment under a public body (c) is not to be treated as creating a pecuniary interest in a contract between the public body and the borough council or other matter under discussion between those bodies, nor is a member of a company or other body to be treated as pecuniarily interested, if he has no beneficial interest in their shares or stock. This last provision would exempt a person who holds shares or stock as a trustee. [352]

A person is also to be treated as having an indirect pecuniary interest in a contract or other matter if he is a partner, or in the employment of a person with whom the contract is made or proposed to be

(b) L.G.A., 1933, s. 76 ; 26 Statutes 346.

(c) Defined in s. 305 as including a local authority and various specified bodies not acting for their own profit such as improvement commissioners, water, gas or electricity boards, etc.

made, or who has a direct pecuniary interest in the other matter under consideration.

Where married persons are living together the pecuniary interest in a contract or other matter of one spouse, if known to the other spouse, is to be deemed to be also the pecuniary interest of that other spouse.

[353]

Disclosure of an interest in any contract, proposed contract or other matter may be made by a member of the council by a general notice in writing to the town clerk stating that he or his spouse is a member or in the employment of a specified company or other body, or that he or his spouse is a partner or in the employment of a specified person in respect of the contract or other matter under consideration.

The disclosure of any interest and the notice of such disclosure must be recorded by the town clerk in a book kept for the purpose and the book is to be open to the inspection of any member of the council at all reasonable hours. It should be noted that this book is not open to inspection by a local government elector.

Provision may be made by standing orders for the exclusion of a member of a borough council from a meeting of the council whilst any contract, proposed contract or other matter in which he has such pecuniary interest is under consideration. These standing orders would be made under para. 4 of Part V. of the Third Schedule to the Act. A model form has been issued by the M. of H. **[354]**

The above provisions represent perhaps the most important alteration of the law made by the L.G.A., 1933, especially as they extend not only to members of borough councils, but also to members of county councils, district councils and parish councils. Until June 1, 1934, any share or interest in a contract with the borough council disqualified a person under sect. 12 of the Municipal Corpns. Act, 1882 (*d*), from being elected and from being a councillor of that borough. Sect. 22 (*3*) of the Act of 1882 (*e*) also prohibited a member of the council from voting or taking part in the discussion of any matter before the council in which he had any pecuniary interest.

The L.G.A., 1933, removes the disqualification for election to or being a member of the council, and substitutes the requirements above referred to. Members in office on June 1, 1934, are subject to this requirement. It appears from the Interim Report of the Chelmsford Committee (*f*) that this amendment of the law is based on a recommendation of the Royal Commission on Local Government. Sect. 76 of the Act of 1933 creates a new offence in respect of interest in contracts.

A large number of legal decisions have been given as to whether, on particular facts, a disqualifying interest in a contract does or does not exist, but these cannot be taken as safe guides to the construction of the new provisions of sect. 76 of the Act. The policy of the section being merely the disclosure of interest and the prohibition of voting on or taking part in the consideration of the contract or other matter, it seems probable that the section would be held to extend to any contract or other matter, not expressly excepted from its operation, however small the sum of money involved might be.

Sect. 76 is also applied by sect. 95 (*ff*) of the Act to members of a committee or sub-committee of a borough council, or of any joint com-

(*d*) 10 Statutes 580.

(*f*) Cmd. 4272, p. 25.

(*e*) *Ibid.*, 584.

(*ff*) 26 Statutes 357.

mittee appointed by agreement between councils of counties, boroughs, districts or parishes, whether appointed under Part III. of the Act of 1933 or under any other enactment. In so applying the section, references to meetings of the committee, sub-committee or joint committee are to be substituted for references to meetings of the local authority and references to the clerk to the joint committee for references to the clerk of the authority. A separate book would be kept by the clerk of a joint committee for the entry of disclosures of interest, but it seems to be contemplated that entries relating to a member of a committee or sub-committee of the council should be made in the book kept for the registering of disclosures of interest made by members of the council, because sect. 95 (a) limits the right of inspection by members of a committee or sub-committee, who are not members of the council, to entries in the book relating to members of the committee or sub-committee. [355]

6. Exemption from Office.—Acceptance of any office or duty in a borough is not compulsory on any military, naval, or marine officer in His Majesty's service on full pay or half-pay, or on any officer or other person employed and residing in any of His Majesty's dockyards, victualling establishments, arsenals, barracks, or other naval or military establishments (g). This provision has been extended to the Air Force by Order in Council (h). [356]

It will be seen from p. 168, *ante*, that an officer of the Army or Air Force, on the active list, is disqualified for election as a member of a borough council. Although sect. 253 of the Municipal Corpns. Act, 1882, is not expressly repealed by the L.G.A., 1933, the section seems to have been rendered obsolete by the alterations of the law mentioned *post* abolishing the legal obligation either to accept office or pay a fine. If any officer of H.M. Service should be elected a member of a borough council, whether he is or is not disqualified as being an officer on the active list, a casual vacancy will arise under sect. 61 (2) of the Act of 1933, if he does not, within 2 months of the day of election, deliver to the town clerk a declaration of acceptance of the office. Moreover, as para. 3 of Part I. of the Second Schedule to the Act will require a written consent of the candidate to be given to his nomination as a councillor, it is unlikely that officers who are disqualified as councillors, or who do not wish to serve as councillors, will in future be elected to that office. [357]

7. Acceptance of Office (i).—Any person elected after June 1, 1934, as mayor, alderman or councillor of a borough may not act in the office unless he has signed the prescribed form of declaration of acceptance of office and has delivered it within two months from the day of election to the town clerk. If the declaration is not so delivered the office becomes vacant.

The declaration may be made before either two members of the same council; the town clerk; a justice of the peace or magistrate at any place within His Majesty's dominions; a commissioner appointed to administer oaths in the Supreme Court; or a British consular officer (j). [358]

(g) Municipal Corpns. Act, 1882, s. 253; 10 Statutes 657.

(h) S.R. & O., 1918, No. 548.

(i) L.G.A., 1933, s. 61; 26 Statutes 337.

(j) "Consular officer" is defined in s. 305 of the Act.

A member of the council who has not yet made the declaration of acceptance may take the declaration of another member of the council.

The above provisions represent another alteration of the law. Under sect. 34 of the Municipal Corpns. Act, 1882 (*k*), any qualified person elected as mayor, alderman, councillor or elective auditor was required either to accept office within five days after notice of his election, or to pay to the council a fine for non-acceptance of office. Certain persons could, however, claim exemption on mental or physical grounds or on account of a previous election to the office. The obligation to pay a fine will now be swept away, and it will be for a successful candidate to decide whether he will or will not accept office. If he does not deliver a declaration of acceptance to the town clerk within two months from the day of election, his office will then become vacant. [359]

8. Term and Tenure of Office.—A borough councillor is elected for a term of three years (*l*), unless he is elected to fill a casual vacancy, in which case he holds office for the remainder of the term of office of the councillor in whose place he is elected (*m*).

One-third of the councillors of the borough, or of each ward if the borough is divided into wards, retire each year on November 1. Those retire who have been longest in office without re-election (*n*).

The election takes place and newly elected councillors come into office on November 1 (*o*), meaning apparently on the first moment after election. If that day should be a Sunday both the election and the retirement take place on the following day (*p*).

In a newly incorporated borough the time of retirement of the first councillors is fixed by the charter (*q*).

A councillor who is elected to and accepts the office of alderman of the same borough thereby vacates his office of councillor (*r*). [360]

9. Vacation of Office.—Resignation.—A councillor may at any time resign his office by notice in writing delivered to the town clerk and the resignation takes effect upon the receipt of the notice of resignation (*s*).

The fine formerly payable on resignations under sect. 36 of the Municipal Corpns. Act, 1882 (*t*), is abolished by the L.G.A., 1933, and service as a councillor will no longer be encouraged by the imposition of a penalty on resignation.

Resignation is complete on receipt of the notice by the Town Clerk, and a resolution of the council accepting or declining the resignation is of no effect. The member cannot withdraw his resignation once the notice has been received (*u*). [361]

Absence.—Failure to attend, for a period of 6 consecutive months, any meeting of the council, vacates the office of councillor, mayor or alderman, unless the failure to attend was due to some reason approved by the council (*v*). But under proviso (*a*) to sect. 63 (1) attendance as a member of a committee or sub-committee, or of a joint committee, joint board or other body to which functions of the council have been delegated or transferred is to count as if it were attendance at a meeting of the council.

Absence from meetings of the council does not disqualify a member

(*k*) 10 Statutes 589.

(*m*) *Ibid.*, s. 68; *ibid.*, 348.

(*o*) *Ibid.*, s. 23 (2), (3); *ibid.*, 316.

(*q*) *Ibid.*, s. 131 (1); *ibid.*, 375.

(*s*) *Ibid.*, s. 62; *ibid.*, 338.

(*u*) *R. v. Wigan Corpn.* (1885), 14 Q. B. D. 908; 33 Digest 48, 232.

(*v*) L.G.A., 1933, s. 63 (1).

(*l*) L.G.A., 1933, s. 23 (2); 26 Statutes 316.

(*n*) *Ibid.*, s. 23 (2); *ibid.*

(*p*) *Ibid.*, s. 295; *ibid.*, 462.

(*r*) *Ibid.*, s. 21 (3); *ibid.*, 316.

(*t*) 10 Statutes 589.

of any branch of H.M. Naval, Military or Air Forces when employed on service during war or any emergency (a).

Any person employed in H.M. service in connection with war or any emergency, whose employment in H.M. service is certified by the M. of H. to be such as to entitle him to relief from disqualification by absence, is also exempt.

Prior to June 1, 1934, if a borough councillor was absent from the borough for more than 6 months, he became disqualified for holding office (b), but there was no provision disqualifying a councillor by reason of absence from meetings, although under sect. 46 (6) of the L.G.A., 1894 (c), a member of a district council or parish council vacated his seat by absence from meetings for 6 months. This principle will be extended to members of borough councils by sect. 63 of the L.G.A., 1933. To prevent questions being raised as to the effect of non-attendance at meetings before June 1, 1934, proviso (c) to sect. 63 (1) enacts that in relation to a member of the council of a borough, the period of 6 consecutive months must be a period commencing on or after that date.

After a seat has become vacant under sect. 63 of the Act of 1933, the next step is for the council to declare the office vacant under sect. 64 of that Act, and signify the vacancy by a notice signed by the town clerk and affixed to their offices. Before this step is taken, notice of it should be given to the member concerned, with an intimation of the day on which the matter will be considered by the council, so that he may have an opportunity of contending that his office has not become vacant, and of advancing for the approval of the council illness or some other reason for his absence (d).

The commencement of the period of 6 months should probably be reckoned from the date of the first meeting of the council which the member failed to attend (e), notwithstanding that the terms of sect. 63 of the new Act differ from those of sect. 46 (6) of the L.G.A., 1894.

Although under sect. 63 (1) of the Act, a person ceases to be a member of the council on the completion of 6 consecutive months' absence from meetings, it would appear that the sub-section should be read as qualified by sect. 64, so that the office does not become vacant until it has under sect. 64 been declared by the council to be vacant, and that the council may approve the reason for absence after the period of 6 months has expired. Upon such an approval being given, the member would retain his office and sect. 63 would be overridden. The opposite view, viz., that a councillor could not, in such a case, be allowed to retain his office would create great difficulties in working these provisions. [362]

10. Amotion from Office.—The common law right of amotion from office for misconduct was discussed by the Court of Appeal in 1895 (f), and doubt was expressed as to whether it exists since the Municipal Corpn. Act, 1882, and whether such action is not in derogation of the statutory rights of the electors. The desire to eject a person as a member of a borough council usually arises through his persistence in

(a) L.G.A., 1933, s. 63 (1) (b); 26 Statutes 338.

(b) Municipal Corpn. Act, 1882, s. 39 (1); 10 Statutes 590; repealed by L.G.A., 1933.

(c) 10 Statutes 805.

(d) See *Richardson v. Methley School Board*, [1893] 3 Ch. 510; 33 Digest 11, 24.

(e) See *Kershaw v. Shore-ditch Corpn.* (1906), 70 J. P. 190; 33 Digest 11, 23.

(f) *Booth v. Arnold*, [1895] 1 Q. B. 571; 33 Digest 69, 422.

disorderly conduct at meetings of the council. In para. 4 of Part V. of the Third Schedule to the L.G.A., 1933, the legislature has reproduced para. 13 of the Second Schedule to the Municipal Corpn. Act, 1882 (g), allowing standing orders to be made by a borough council for the regulation of their proceedings and business, but has refrained from indicating the nature of the penalties which a persistent breach of standing orders will entail. No doubt a member so offending could be removed by direction of the mayor from a particular meeting of the council if he refused to withdraw, and the assistance of the police could, if necessary, be invoked, but it is rather more doubtful than it was at the time of the decision in *Booth v. Arnold*, ante, whether the member could be removed from his office.

But it may be useful to refer to two cases in which the power of amotion has been exercised by the council of a borough.

In the year 1872 a councillor of the borough of Penzance was amoved for using opprobrious expressions, reflecting on the conduct of the mayor in the chair, by a resolution of the council under seal. He was also amoved from the corporate body of the mayor, aldermen and burgesses of the borough of Penzance (h).

In the year 1933 a member of the corpn. of the borough of Clifton Dartmouth Hardness (usually called Dartmouth) was amoved on the ground of alleged habitual obstruction of business.

The person proceeded against must have reasonable notice to appear and to be heard (i).

If the party charged does not appear, or appearing remains silent, the charge must be proved as though he had denied it (k). [363]

11. London.—See the title METROPOLITAN BOROUGH. [364]

(g) 10 Statutes 660.

(h) *Re Norton and Penzance Town Council* (1872), Times, June 10; 33 Digest 60, 423.

(i) *Bagg's Case* (1615), 11 Co. Rep. 93 b; 13 Digest 305, 376.

(k) *R. v. Faversham Fishermen's Co.* (1799), 8 Term Rep. 352; 13 Digest 306, 378.

BOROUGH ENGINEER AND SURVEYOR

	PAGE		PAGE
PRELIMINARY - - - - -	175	INTEREST IN CONTRACTS - - - - -	179
APPOINTMENT - - - - -	177	CONSULTING SURVEYOR - - - - -	180
QUALIFICATIONS - - - - -	178	LONDON - - - - -	180
DUTIES - - - - -	179		

See also titles :

COUNTY SURVEYOR ;

DUTIES AND POWERS OF OFFICERS ;

GUARANTEE OF OFFICERS ;

OFFICERS OF LOCAL AUTHORITIES ;

SUPERANNUATION.

Preliminary.—The duties of a borough engineer and surveyor may be classified in two groups: (1) sanitary duties imposed when early efforts were made by means of local Acts to improve the sanitary condition of towns; and (2) duties as to the construction and repair of highways inherited from the abolished office of surveyor of highways. Sect. 7 of the Towns Improvement Clauses Act, 1847 (a), which Act

(a) 13 Statutes 534.

was passed for the purpose of shortening local Acts by the incorporation of its provisions with local Acts, required the persons responsible for the execution of a local Act to appoint a duly qualified person to act as a local surveyor of paving, drainage and other authorised works, at a salary. The appointment of an inspector of nuisances was also directed by sect. 9 of the Act, and the section shows why the officer was given this title, as he was to superintend the scavengers and to report the existence of any nuisances. [365]

The office of surveyor of highways was first created by an Act of 1555 (b) which required the constables and churchwardens of every parish to call a meeting of the parishioners to elect "two honest persons of the parish to be surveyor and orderers for one year, of the works for the amendment of the highways in the parish." These surveyors were required to direct the performance of "statute labour" on the roads, and were liable to a penalty if they refused to serve. The duties of these surveyors of highways were fully described in the Highway Act of 1773 (c), which in its turn was repealed and largely replaced by the Highway Act, 1835 (d), and the duties there laid down form the basis of the present work of the borough surveyor as regards roads. Under sect. 7 of the Act, the qualification of an unpaid surveyor who was elected by the vestry was that of being an owner or occupier of lands of a certain value, but by sect. 9 the vestry were also empowered to "nominate and elect any one person of skill and experience to serve the said office of surveyor of such parish, and to fix such salary for the execution of such office as they shall think fit." [366]

In boroughs and urban districts, sect. 144 of the P.H.A., 1875 (e), provided that the council should exclusively execute the office and be surveyor of highways. In rural districts a similar transfer to the R.D.C. was made by sect. 25 of the L.G.A., 1894 (f). It follows that for many years surveyors of highways have not been appointed under the Highway Act, 1835, and the sections of that Act already mentioned have not been acted upon. Sects. 6 to 18, 46 and 48 of the Act of 1835 were repealed, except as regards London, as from June 1, 1934, by the L.G.A., 1933, which came into operation on that date. [367]

By sect. 189 of the P.H.A., 1875 (g), every urban authority (meaning the council of every borough and urban district) were required to appoint a fit and proper person to be surveyor. The councils were also allowed by the section to pay the officers appointed under it such reasonable salaries, wages or allowances as they might think proper, but every such officer was to be removable by the council at their pleasure. [368]

When the functions of the surveyor of highways were transferred to borough and U.D.Cs., sect. 144 of the P.H.A., 1875 (h), provided that all ministerial acts required by Act of Parliament to be done by or to the surveyor of highways might be done by or to the surveyor of the council, or by or to such other person as they might appoint. Thus the various steps required by sect. 85 of the Highway Act, 1835 (i), to be taken by the surveyor of highways on proceedings to obtain an

(b) 2 & 3 Ph. & M., c. 8.

(d) 9 Statutes 50.

(f) 10 Statutes 794. This section was in part repealed by the L.G.A., 1929, when highway duties were transferred to the county councils, not only in respect of all roads in R.Ds., but also of classified roads (other than those claimed under sect. 32, *ibid.*) in boroughs and U.Ds. (ss. 30 and 31, *ibid.*).

(g) 13 Statutes 707.

(i) 9 Statutes 99.

(c) 13 Geo. 3, c. 78.

(e) 13 Statutes 683.

(h) *Ibid.*, 683.

order of quarter sessions for the diversion of a highway are probably the kind of ministerial acts contemplated by sect. 144 of the Act of 1875, and may accordingly be performed by the surveyor. [369]

Action by the surveyor is also contemplated by various provisions in the P.H.A., 1875, such as sect. 16 (*k*) as to the laying of sewers in private lands, sect. 62 (*l*) as to the necessity of providing a proper water supply to a house, and sects. 36 and 38 (*m*) as to the provision of closet accommodation. [370]

To the title of surveyor, the title "Borough Engineer" has been added in recognition of the increasingly scientific character of the duties performed. [371]

Appointment.—The L.G.A., 1933 (*n*) (repealing as from June 1, 1934, sect. 189 of the P.H.A., 1875) (*o*), by sect. 106 (1) requires every borough council to appoint a fit person as surveyor. A similar requirement applying to U.D.Cs. is made by sect. 107 (1) of the Act, but as respects R.D.Cs. is qualified by the proviso to the sub-section in which it is stated that a R.D.C. need not appoint a surveyor.

Any appointment made under an enactment repealed by the L.G.A., 1933, is not to be affected by the repeal, and is to have effect as if it had been made under the corresponding provision in that Act (*p*), viz. in this instance under sect. 106 as respects a borough surveyor, and sect. 107 as respects a surveyor of an urban or rural district.

An amendment of importance is made by sect. 121 (1) (*pp*) of the Act. In the case of *Brown v. Dagenham U.D.C.* (*q*), it was decided that where an enactment provides that an officer shall hold his office at the pleasure of the council, the statute cannot be varied by an agreement made between the council and the officer that notice of a specified duration shall be given on either side. The new provision supersedes the Dagenham case by allowing as one of the terms upon which an officer is to hold office, a provision that the appointment shall not be terminated by either party without giving to the other party such reasonable notice as may be agreed. Where on June 1, 1934, an officer holds office upon terms which purport to include such a provision, the sub-section validates the provision as from that day.

Although, therefore, under sects. 106 and 107 of the Act a surveyor will hold office during the pleasure of the council, these sections are subject to sect. 121 of the Act, so as to allow of an agreement between the council and the officer that so many weeks' or months' notice shall be given on either side before the appointment is terminated.

Subject to the provision already mentioned validating an existing condition that reasonable notice is to be given, nothing in Part IV. of the Act (Officers) is to affect the salary or tenure of office of any officer of a local authority holding office on June 1, 1934 (sect. 124 (1)) (*qq*).

By sect. 115 of the L.G.A., 1933 (*r*), a council who appoint a surveyor may also appoint a deputy-surveyor to act in the surveyor's place when the office is vacant or the surveyor is for any reason unable to act, and the deputy, when acting as such, has, subject to the terms of his appointment, all the functions of the surveyor. The council may pay him such reasonable remuneration as they may determine, and he holds office during the pleasure of the council, unless an agreement is

(*k*) 13 Statutes 633.

(*m*) *Ibid.*, 640, 641.

(*o*) 13 Statutes 707.

(*pp*) 26 Statutes 270.

(*qq*) 26 Statutes 372.

L.G.L. II.—12

(*l*) *Ibid.*, 651.

(*n*) 26 Statutes 361.

(*p*) L.G.A., 1933, proviso (*v*) to s. 307 (1).

(*q*) [1929] 1 K. B. 737; Digest (Supp.).

(*r*) *Ibid.*, 367.

made under sect. 121 that a reasonable notice shall be given by either party before the appointment is terminated. If the office of surveyor is vacant, or the surveyor is unable to act, and no deputy has been appointed, or the deputy appointed is unable to act, a temporary surveyor may be appointed under sect. 116 of the L.G.A., 1933 (*rr*), who has, subject to the terms of his appointment, all the functions of the surveyor. The council may pay a temporary surveyor such reasonable remuneration as they may decide. The provisions in sects. 119 and 120 (*s*) of the Act as to the security to be given by surveyors and their liability to render accounts extend to other officers in common with surveyors, and will be found under the titles **GUARANTEE OF OFFICERS AND DUTIES AND POWERS OF OFFICERS**.

A surveyor is usually required to devote his whole time to the work of the council. [372]

The Minister of Transport possesses a certain control over surveyors. By sect. 17 (2) of the M. of T. Act, 1919 (*t*), the Minister may, for the purpose of advances for the construction, improvement or maintenance of roads, by agreement with a council, defray half the salary and establishment charges of the engineer or surveyor who is responsible for the maintenance of roads, subject to the condition that the appointment, retention and dismissal of such engineer or surveyor, and the amount of such establishment charges are approved by the Minister. Such agreements exist in most cases where grants are made from the Road Fund. Any agreement made under this section is specially saved by sect. 124 (3) of the L.G.A., 1933 (*u*). Borough surveyors have the same rights as other officers under Superannuation Acts (see the title **SUPERANNUATION**). The grants from the Road Fund in respect of the establishment expenses of surveyors are reviewed from time to time (*v*). [373]

Qualifications.—The only statutory qualification is that the surveyor should be a "fit person," but the designing of important new works such as bridges and sewerage and water schemes, as well as the far higher standard of maintenance of the roads, and the carrying out, in many cases, of housing schemes, by the staff of the borough engineer and surveyor, necessitate wide qualifications. The surveyor must have scientific training, and membership of the Institute of Civil Engineers, or a University Engineering Degree, is almost an essential qualification. In addition, the surveyor is generally a Member of the Institute of Municipal and County Engineers, the Surveyors' Institute, or some other professional society. He must also be conversant with administration, the functions of the committees he specially represents, and the organisation and control of indoor and outdoor staff, for he has not only a staff of clerks for costing pay-sheets, records of stores and supplies, and a technical indoor staff for the drawing office, but an outside staff of labourers organised under inspectors and foremen. He has to supervise the payment of their wages and the records of all transactions and services.

Sect. 122 of the L.G.A., 1933 (*w*), contains a new provision disqualifying a member of a council for being appointed by that council as a paid officer, so long as he is a member of the council, and for 12 months

(*rr*) 26 Statutes 368.

(*t*) 3 Statutes 435.

(*v*) For the latest, operating on April 1, 1934, see Circular No. 388 (Roads), dated March 13, 1933.

(*s*) *Ibid.*, 369, 370.

(*u*) 26 Statutes 372.

(*w*) 26 Statutes 371.

after he has ceased to be a member. The term "member of a council" includes the mayor and aldermen, as well as the councillors of a borough (see sect. 17 (2) of the Act) (x). [374]

Duties.—The duties of a borough engineer and surveyor vary according to the size of the borough, the assignment of work to separate departments and the amount of work that is carried out by direct labour. The surveyor's superintendence is necessary where statutory undertakers lay gas, water or electricity mains or tramways. Separate departments may be constituted for such work as the supply of gas, water or electricity, the maintenance of parks or the running of tramways or trolley vehicles, and these departments may be placed in the charge of officers, who are independent of the borough engineer or surveyor. Where gas or electricity is supplied by a borough council, an independent engineer is almost invariably appointed. Where contractors are employed, the surveyor usually prepares the specifications for tenders, reports on the progress of the work to the committee and the council, and keeps a watch on the contractor, as the council may be responsible for any torts committed (t). Work upon highways includes not only the construction of new roads and the widening or diversion of roads, but also the work of cleansing streets and keeping them free from obstructions, and the repair of all roads, footpaths and bridges. It includes also the making up of private streets under sect. 150 (u) of the P.H.A., 1875, or the Private Street Works Act, 1892 (a). The supervision of the erection of hoardings where building operations are proceeding, the recovery of the expenses entailed by extraordinary traffic, the provision of street refuges, and the fixing of building lines under sect. 5 of the Roads Improvement Act, 1925 (b), and improvement lines under sect. 33 of the P.H.A., 1925 (c), all give work to the surveyor, as well as the making and enforcing of building bye-laws, and the submission and approval of the plans of new and reconstructed buildings. As to these last subjects, see the titles BUILDING BYE-LAWS and PLANS. [375]

The collection and disposal of refuse is also within the department of a borough surveyor, and supervision must be exercised, even if the work is done by contract. In a seaside town, sea-defence works may also have to be executed and maintained. The construction of sewers and sewage disposal works entails collaboration with the health department of the council, and the surveyor, in addition to the M.O.H., is responsible for the preparation of schemes for slum clearances, as well as for housing schemes generally. As to housing schemes, see under the title HOUSING, and as to town planning schemes, see under the title TOWN PLANNING. [376]

Interest in Contracts.—Sect. 193 of the P.H.A., 1875 (d), prohibited officers or servants appointed or employed under that Act from being in any way concerned or interested in any bargain or contract made with the local authority for any of the purposes of the Act. The precise effect of this section has always been a matter of doubt, and it has been thought possible that an arrangement whereby the surveyor

(x) 26 Statutes 318.

(t) See *Penny v. Wimbledon U.D.C.*, [1899] 2 Q. B. 72; 34 Digest 161, 1260; and other cases on that page.

(u) 13 Statutes 686.

(b) *Ibid.*, 223.

(d) *Ibid.*, 709.

(a) 9 Statutes 193.

(c) 13 Statutes 1128.

undertook for special remuneration work for his council, which was outside his ordinary duties, might infringe the section (e). The penalty for a breach of the enactment, consisting as it does of a forfeiture of £50 and disqualification for holding or continuing in any office or employment under the P.H.A., 1875, is very severe. The L.G.A., 1933 (repealing sect. 193 of the Act of 1875), provides that if it comes to the knowledge of an officer employed by the council of a borough or district (f), that a contract in which he has any direct or indirect pecuniary interest (not being a contract to which he is himself a party) has been, or is proposed to be, entered into by the council, or any committee of the council, he must, as soon as practicable, give notice in writing to the council of the fact that he is so interested. The test of an indirect pecuniary interest to be applied is the same as the test laid down by sect. 76 (2) and (3) of the Act, as respects the indirect interest of councillors in contracts and so includes the interest of a spouse.

An officer would do well to send in a notice if he feels any doubt whether he has or has not an indirect pecuniary interest in a contract.

Sect. 123 (2) of the Act of 1933 also reproduces a provision in sect. 193 of the P.H.A., 1875, forbidding an officer, under colour of his office or employment, from exacting or accepting any fee or reward whatsoever, other than his proper remuneration.

The penalty for failing to give notice under sub-sect. (1) of sect. 123, or for a contravention of sub-sect. (2) of the section is a fine not exceeding £50, but the disqualification for holding or continuing in any office has been given up. The substitution of a requirement that a notice of interest shall be given by the officer for a positive disqualification for holding office should much reduce the number of cases in which difficulties arise, especially as notice need not be given where the officer is himself a party to the contract with the council. [377]

Consulting Surveyor.—For some of the work of a surveyor and engineer in a large borough it is necessary to employ an expert consultant. For the construction of new main roads or works of sewerage or sewage disposal, the erection of dwellings under the Housing Acts, or the construction of a new water reservoir or a refuse destructor, the borough council may have to obtain the advice of such an expert, either before the work is undertaken in order that the council may decide on their action, or to prepare plans and supervise the work during construction. The remuneration for special services of this kind forms part of the cost of the work and is defrayed from the loan. The special skill, or knowledge of local conditions, possessed by an officer who has reached the age limit is sometimes retained by the council appointing him as a consulting surveyor at a reduced salary. In some instances an objection to the payment of the salary has been made by the district auditors of the M. of H., particularly if it can be suggested that the salary is really a superannuation allowance in disguise, and the officer cannot be paid a superannuation allowance. The M. of T. do not recognise such an arrangement for the purposes of their grants. [378]

London.—The metropolitan borough councils perform most of the

(e) Cf. *Whiteley v. Barley* (1888), 21 Q. B. D. 154; 33 Digest 16, 58; and *Edwards v. Salmon* (1889), 23 Q. B. D. 531; 33 Digest 17, 61.

(f) S. 123 (1); 26 Statutes 371. The section extends also to officers of county councils and parish councils.

duties which, outside London, devolve on a borough council and are similar to each other in type.

They are empowered by sect. 62 of the Metropolis Management Act, 1855 (*g*), to appoint or employ and to remove at pleasure such . . . surveyors and such other officers and servants as may be necessary, and may allow to such . . . surveyors, officers and servants respectively such salaries and wages as the council may think fit. Sect. 64 of the Act prohibits an officer or servant of the council from being concerned or interested in any contract or work made with or executed for the council, under a penalty of £50 and disqualification for holding or continuing in any office or employment under the council. The section also forbids an officer under colour of his office or employment to accept any fee or reward other than his proper remuneration. These provisions have not been repealed or amended by the L.G.A., 1933.

By sect. 4 of the L.C.C. (General Powers) Act, 1920 (*gg*), it is not lawful within any metropolitan borough to erect any house or other building or to rebuild any house or other building which has been pulled down to the ground floor or to occupy such a house or building unless it is drained and supplied with water to the satisfaction of the council, and by sect. 76 of the Act of 1855 seven days' notice must be given to the council before beginning to build or rebuild or to connect drains with sewers, and by sect. 63 of the Metropolis Management Amendment Act, 1862 (*h*), it shall be lawful for the surveyor if he deems it necessary and proper so to do to require within three days after such notice that the building or works referred to shall not be proceeded with until the directions of the council have been notified. By sect. 6 of the Metropolis Management Amendment Act, 1890 (*i*), it shall not be lawful to lay out or commence to form any street, road, passage or way over land from which sand or other subsoil has been excavated or removed until the consent of the local metropolitan borough council has been obtained, and by the following section the surveyor is expressly directed to take care that the provisions of the preceding section are complied with and any conditions imposed by the council duly observed.

In general the surveyor and engineer to a metropolitan borough council is concerned in the execution of most of the functions of the council.

The variety of these functions is shown by the following description of the duties referred to the Works, Public Health, and Highways Committees of the Westminster City Council.

Works.—(1) The construction, paving, maintenance and repair of all streets vested in the council or of which the council undertakes the construction, paving, maintenance or repair.

(2) The naming and numbering of streets.

(3) The construction, maintenance and cleansing of sewers.

(4) The construction, maintenance and cleansing of public sanitary conveniences and urinals.

(5) The maintenance and control of public open spaces maintained by the council.

(6) The provision of seats and drinking fountains for the public, and troughs for horses or cattle in streets (P.H. (London) Act, 1891, sect. 51, and L.C.C. (General Powers) Act, 1928, sect. 35) (*k*).

(*g*) 11 Statutes 893.

(*h*) *Ibid.*, 981.

(*k*) *Ibid.*, 1057, 1413.

(*gg*) *Ibid.*, 1334.

(*i*) *Ibid.*, 1016.

(7) The planting and maintaining of trees, shrubs and grass margins, and the erection and maintenance of tree guards in highways (L.C.C. (General Powers) Act, 1904, sect. 49, and Roads Improvement Act, 1925, sect. 1) (*l*).

(8) The lopping of trees, hedges and shrubs overhanging streets (L.C.C. (General Powers) Act, 1928, sect. 39) (*m*).

(9) The repair and maintenance of so much of the Embankment Wall of Grosvenor Road as the council is liable to repair and maintain.

(10) The repair and maintenance of public statues vested in charge of the council.

(11) The execution, supervision and control of all works undertaken or contracted for by the council, not within the reference to, or under the control of, any other committee.

(12) The supervision and execution of so much of all drainage works as lies between the intercepting trap of each drain and the sewer, and the approval of all plans relating thereto.

(13) The control and maintenance of land, wharves, depots and other buildings allotted to the Works Department.

(14) All matters within the jurisdiction of the council, not specifically referred to another committee, relating to :

The erection, construction, maintenance and demolition of buildings, walls, pavement lights and coal plates.

The administration of the bye-laws for the regulation of lamps, signs or other structures overhanging the public way (London Building Act, 1930, sect. 184) (*n*).

The breaking up and reinstatement of streets by public undertakers. The removal of projections which endanger or render less commodious the passage along any street (Metropolis Management Act, 1855, sect. 119) (*o*).

The removal of obstructions or encroachments in, upon, over or under any street (Metropolitan Paving Act, 1817, sect. 65 ; London Building Act, 1930, sect. 221) (*p*).

The licensing of hoards and wooden structures.

The removal of sky-signs.

The suspension over carriageways of flags and banners for advertisement purposes (L.C.C. (General Powers) Act, 1924, sect. 54) (*q*).

The enforcement of bye-laws made by the L.C.C. under the Advertisements Regulation Acts, 1907 and 1925 (*r*).

The storage of timber.

The London Overhead Wires Act, 1891 (*s*), and the bye-laws thereunder.

Bye-laws made by the L.C.C. in relation to the demolition of buildings (L.C.C. (General Powers) Act, 1927, sect. 53) (*t*).

The enclosure of unenclosed land adjoining streets (L.C.C. (General Powers) Act, 1925, sect. 33) (*u*).

Contributions to expenses of paving and sewerage of any street not repairable by the council (*ibid.*, sect. 34) (*u*).

(*l*) 11 Statutes 1260 ; 9 Statutes 219.

(*n*) 23 Statutes 308.

(*p*) *Ibid.*, 855 ; 23 Statutes 319.

(*r*) 13 Statutes 908, 1118.

(*s*) 54 & 55 Vict. c. lxxvii., repealed by London Overground Wires, etc., Act, 1933 ; 26 Statutes 604 ; which, however, saves bye-laws made under former Act.

(*t*) 11 Statutes 1393.

(*m*) 11 Statutes 1414.

(*o*) 11 Statutes 914.

(*q*) 11 Statutes 1366.

(*u*) *Ibid.*, 1374, 1375.

The licensing and control of street traders (L.C.C. (General Powers) Act, 1927, sects. 30—50) (a).

The variation of the width of carriageways and footways on the making up of new streets (*ibid.*, sect. 58) (b).

Notices from owners and occupiers of existence of disused drains (L.C.C. (General Powers) Act, 1928, sect. 20) (c).

Prevention of surface water from premises flowing on to the footpath (*ibid.*, sect. 37) (d), and of soil and refuse being washed into streets (*ibid.*, sect. 38) (e).

Street lighting, etc.

Highways and Public Health.—The cleansing of gullies, the cleansing and watering of streets, including the footways, the ballasting of roads, the removal of snow, the collection, removal and disposal of street, house and trade refuse, and the provision, cleansing, emptying and maintenance of ashpits and movable receptacles for house and trade refuse under the provisions of the P.H. (London) Act, 1891 (f), and any other Acts, and any bye-laws thereunder (sects. 16 (1) and (2) and 39 (1) of the P.H. (London) Act, 1891). The control and maintenance of lands, wharves, depots, etc., sanitary conveniences and urinals, flushing hydrants and ballast bins.

(The foregoing lists of duties are by no means exhaustive.) [379]

(a) 11 Statutes 1386—1392.

(c) *Ibid.*, 1407.

(e) *Ibid.*, 1414.

(b) *Ibid.*, 1395.

(d) *Ibid.*, 1413.

(f) *Ibid.*, 1025.

BOROUGH FUNDS ACTS

See BILLS, PARLIAMENTARY AND PRIVATE.

BOROUGH JUSTICES

See JUSTICES OF THE PEACE.

BOROUGH MEDICAL OFFICER OF HEALTH

See MEDICAL OFFICER OF HEALTH.

BOROUGH POLICE

	PAGE		PAGE
1. INTRODUCTORY - - -	184	9. EXTRA DUTIES - - -	193
2. BOROUGH POLICE FORCES -	185	10. TRAFFIC CONTROL IN A	
3. CONTROL OF BOROUGH POLICE -	187	BOROUGH - - -	194
4. ORGANISATION OF A BOROUGH		11. APPOINTMENT OF A BOROUGH	
FORCE - - -	189	CONSTABLE - - -	195
5. JURISDICTION OF A BOROUGH		12. PAY AND CONDITIONS OF SER-	
CONSTABLE - - -	190	VICE - - -	195
6. STATUS OF A BOROUGH CON-		13. DISCIPLINE OF A BOROUGH	
STABLE - - -	191	POLICE FORCE - - -	196
7. POWERS OF A BOROUGH CON-		14. RETIREMENT, ETC., FROM A	
STABLE - - -	192	BOROUGH FORCE. - - -	197
8. DUTIES OF A BOROUGH CON-		LONDON - - -	198
STABLE - - -	193		

See also titles :

CHIEF CONSTABLE ;
 COMMISSIONER OF POLICE ;
 METROPOLITAN POLICE ;
 POLICE ;

POLICE PENSIONS ;
 SPECIAL CONSTABLES ;
 STANDING JOINT COMMITTEE ;
 WATCH COMMITTEE.

1. **Introductory.**—Excluding police forces established for special purposes such as railway, docks or river police forces, there are four types of police forces in England and Wales, established for the general policing of police districts, viz. the metropolitan police, the City of London police, the county police and the borough police.

The main Police Acts, such as the Police Pensions Act, 1921 (*a*), the Police Act, 1919 (*b*), and also the Police Regulations (*c*) made under the latter Act, apply to all the members of these four types of forces.

The borough police forces are those separate police forces maintained in certain cities and boroughs outside the area of the Metropolitan police district.

Several Acts of Parliament apply particularly to borough forces, such as :

(1) The Town Police Clauses Act, 1847 (*d*), an Act to consolidate certain provisions affecting the police of towns which extends only to towns to which its provisions have been applied by an Act of Parliament, usually a local Act. Although sect. 171 of the P.H.A., 1875 (*e*), incorporated with that Act the provisions of the Act of 1847 with respect to obstructions and nuisances in the streets, fires, hackney carriages, etc., for the purpose of regulating such matters in all boroughs and urban districts, sects. 6 to 20 of the Act of 1847, which relate to police constables, were not so applied.

(2) The County and Borough Police Act, 1856 (*f*).

(3) The County and Borough Police Act, 1859 (*g*).

(*a*) 12 Statutes 873.

(*b*) *Ibid.*, 867.

(*c*) Police Regulations, 1920 (S.R. & O., No. 1484), reprinted as amended down to 1933.

(*d*) 12 Statutes 804.

(*e*) 13 Statutes 696.

(*f*) 12 Statutes 812.

(*g*) *Ibid.*, 820.

(4) The Municipal Corporations Act, 1882, an Act replacing the Municipal Corporations Act, 1835, which had directed the formation of a watch committee and a police force in every incorporated borough. Part IX. of this Act (*h*) deals with the formation and regulation of borough police forces. [380]

2. Borough Police Forces.—The description “borough police” attaches to the police of any provincial city or borough which maintains its own police force. A borough may be policed by “county police” or “borough police,” but the constables are not “borough police” unless the borough or city has its own separate police force.

The Municipal Corporations Act, 1835, required the council of every incorporated borough to appoint a watch committee which had the duty of appointing and regulating a police force for the borough.

However, the County Police Act, 1840, (s. 14) (*i*), allowed an incorporated borough to consolidate, by agreement, its police force with the county police force, and such consolidation was later facilitated by sect. 5 of the County and Borough Police Act, 1856 (*k*).

It should also be noted that, under sect. 81 of the L.G.A., 1888, and sect. 91 of the L.G.A., 1933 (*l*), the council of a borough might form a joint committee with a county council and combine for the purposes of joint police administration.

The increase in the number of incorporated boroughs would have resulted in a great increase in the number of borough police forces had not sect. 215 of the Municipal Corporations Act, 1882 (*m*), forbidden the establishment in a borough of a new separate police force not consolidated with the county police force unless the population of the borough was 20,000 or upwards according to the census taken next before the date of the incorporation. Also the number of separate borough forces existing in 1888 was reduced as a result of the direction in sect. 39 of the L.G.A., 1888 (*n*), that the police force of a borough with a population of less than 10,000 at the census of 1881, should be merged with the county police force.

It is usual for the H.O., when a borough seeks incorporation, to arrange that the borough shall agree to consolidate its police force with that of the county.

The position at present is that 72 of the 80 provincial county boroughs and 49 of the 243 non-county provincial boroughs have separate police forces of their own. The Report of the Select Committee on Police Forces (Amalgamation), 1932 (*nn*), contains a recommendation that the separate police of all non-county boroughs (except the Royal Borough of Windsor) with a population of less than 30,000 according to the census of 1931, should be merged in the police forces of the counties in which they are situated. This recommendation affects 24 of the 49 non-county borough police forces.

There are now 121 borough police forces in England and Wales, with authorised strengths ranging from 11 to 1725.

The ten largest borough forces are Liverpool (1725), Birmingham (1587), Manchester (1404), Leeds (694), Sheffield (676), Bristol (610), Bradford (478), Hull (456), Newcastle-on-Tyne (420), and Nottingham (386). [381]

(*h*) 10 Statutes 636.

(*i*) 12 Statutes 790.

(*k*) *Ibid.*, 813.

(*l*) 10 Statutes 752; 26 Statutes 353.

(*m*) 10 Statutes 645. This section is repealed by the L.G.A., 1933, but re-enacted by sect. 136 of that Act.

(*n*) *Ibid.*, 717.

(*nn*) 1931—32 H. C. 106.

BOROUGH POLICE FORCES IN ENGLAND AND WALES

N.B.—“B.” means Borough and “Co. B.” means County Borough. Quarter sessions boroughs are indicated by asterisks. The authorised strength of the force is given in brackets.)

Bedfordshire	—	Bedford, B.* (56); Luton, B. (65).
Berkshire	—	Reading, Co. B.* (113); Windsor, B.* (31).
Buckinghamshire	—	Chepping Wycombe, B. (29).
Cambridgeshire	—	Cambridge, B.* (87).
Cheshire	—	Birkenhead, Co. B.* (200); Chester, City, County and Co. B.* (54); Congleton, B. (13); Hyde, B. (39); Macclesfield, B. (40); Stalybridge, B. (27); Stockport, Co. B. (124); Wallasey, Co. B. (116).
Cornwall	—	Penzance, B.* (16).
Cumberland	—	Carlisle, City and Co. B.* (74).
Derbyshire	—	Chesterfield, B. (71); Derby, Co. B.* (159); Glossop, B. (31).
Devon	—	Exeter, City, County and Co. B.* (72); Plymouth, City and Co. B.* (280); Tiverton, B.* (11).
Durham	—	Gateshead, Co. B. (155); Hartlepool, B. (26); South Shields, Co. B. (135); Sunderland, Co. B.* (200).
Essex	—	Colchester, B.* (59); Southend-on-Sea, Co. B.* (162).
Gloucestershire	—	Bristol, City, County and Co. B.* (610).
Hampshire	—	Portsmouth, City and Co. B.* (296); Southampton, Co. B.* (218); Winchester, City * (35).
Herefordshire	—	Hereford, City * (42).
Hertfordshire	—	St. Albans, City (35).
Kent	—	Canterbury, City and Co. B.* (35); Dover, B.* (64); Folkestone, B.* (51); Gravesend, B.* (44); Maidstone, B.* (56); Margate, B.* (56); Ramsgate, B. (53); Rochester, City * (52); Tunbridge Wells, B. (55).
Lancashire	—	Accrington, B. (52); Ashton-under-Lyne, B. (61); Bacup, B. (28); Barrow-in-Furness, Co. B. (89); Blackburn, Co. B.* (174); Blackpool, Co. B. (118); Bolton, Co. B.* (202); Bootle, Co. B. (100); Burnley, Co. B.* (118); Clitheroe, B. (15); Lancaster, B.* (53); Liverpool, City and Co. B.* (1725); Manchester, City, County and Co. B.* (1404); Oldham, Co. B.* (172); Preston, County and B.* (144); Rochdale, Co. B. (109); St. Helens, Co. B. (141); Salford, City and Co. B.* (330); Southport, Co. B. (103); Warrington, Co. B. (100); Wigan, Co. B.* (109).
Leicestershire	—	Leicester, City and Co. B.* (260).
Lincolnshire	—	Boston, B. (25); Grantham, B.* (23); Grimsby, Co. B.* (98); Lincoln, City, County and Co. B.* (82).

Monmouthshire	-	Newport, Co. B. (121).
Norfolk	-	Gt. Yarmouth, Co. B.* (74); King's Lynn, B.* (23); Norwich, City, County and Co. B.* (145).
Northamptonshire	-	Northampton, Co. B.* (130); Peterborough, City * (40).
Northumberland	-	Newcastle-upon-Tyne, City, County and Co. B.* (420); Tynemouth, Co. B. (78).
Nottinghamshire	-	Newark, B.* (20); Nottingham, City, County and Co. B.* (386).
Oxfordshire	-	Oxford, City and Co. B.* (105).
Shropshire	-	Shrewsbury, B.* (47).
Somerset	-	Bath, City and Co. B.* (100); Bridgwater, B.* (20).
Staffordshire	-	Newcastle-under-Lyme, B.* (55); Stoke-on-Trent, City and Co. B.* (251); Walsall, Co. B.* (110); Wolverhampton, Co. B.* (133).
Suffolk	-	Ipswich, Co. B.* (121).
Surrey	-	Guildford, B.* (39); Reigate, B. (40).
Sussex	-	Brighton, Co. B.* (213); Eastbourne, Co. B. (102); Hastings, Co. B.* (110); Hove, B. (77).
Warwickshire	-	Birmingham, City and Co. B.* (1587); Coventry, City and Co. B.* (210); Leamington, B. (45).
Westmorland	-	Kendal, B. (18).
Wiltshire	-	Salisbury, City * (29).
Worcestershire	-	Dudley, Co. B.* (67); Kidderminster, B. (38); Worcester, City, County and Co. B.* (73).
Yorkshire (E.R.)	-	Hull, City, County and Co. B.* (456).
Yorkshire (N.R.)	-	Middlesbrough, Co. B.* (170); Scarborough, B.* (59); York, City, County and Co. B.* (101).
Yorkshire (W.R.)	-	Barnsley, Co. B. (69); Bradford City and Co. B.* (478); Dewsbury, Co. B. (64); Doncaster, Co. B.* (77); Halifax, Co. B.* (134); Huddersfield, Co. B.* (121); Leeds, City and Co. B.* (694); Rotherham, Co. B.* (84); Sheffield, City and Co. B.* (676); Wakefield, City and Co. B. (71).

WALES

Carmarthenshire	-	Carmarthen, B.* (12).
Glamorgan	-	Cardiff, City and Co. B.* (326); Merthyr Tydfil, Co. B.* (87); Neath, B. (39); Swansea, Co. B.* (184). [382]

3. Control of Borough Police.—The police authority are responsible for the administration of a police force, and the police authority of a borough with a police force are the watch committee of the borough (Police Pensions Act, 1921, s. 30, and Third Schedule) (o). See title WATCH COMMITTEE.

It is a cardinal principle of English public administration that local authorities are responsible for the policing of their districts, and as an illustration of the fact it will be sufficient to mention the Riot (Damages) Act, 1886 (*p*), which places the responsibility for damage by rioters upon the police authority of the district. See title RIOTS.

As ancillary to their power of control, the watch committee may from time to time frame such regulations as they deem expedient for preventing neglect or abuse, and for making the borough constables efficient in the discharge of their duties (Municipal Corporations Act, 1882, s. 191 (3)) (*q*), and a copy of any such rules must be sent to the Secretary of State (*ibid.*, sect. 192).

Such rules should not in any way conflict with the statutory Police Regulations, 1920 (*r*).

Although the watch committee is a committee created and placed by statute in control of the borough police, it is necessary under the Municipal Corpn. Act, 1882 (s. 140 and Fifth Schedule, Part 2 (*s*), as amended by sect. 186 of the L.G.A., 1933), to obtain the approval of the borough council before the pay and other expenses of the police can be paid out of the general rate fund. By sect. 2 of the R. & V. A., 1925 (*t*), the general rate of the borough was substituted for the watch rate leviable under sect. 197 of the Act of 1882, for the expenses of the police.

One-half of the total net approved expenditure on purely police purposes is now paid from the annual parliamentary police vote, subject to the conditions laid down in the Secretary of State's Rules of October 24, 1919, under which this Government grant is calculated only on expenses actually incurred for police purposes, services not strictly in the nature of police duty being excluded, the police accounts being audited by the district auditors of the M. of H. The Home Secretary may withhold this Government grant in whole or in part from any force if he is not satisfied that the force is efficiently and properly administered, or if his approval has not been obtained for the rates of pay and allowances of the force. A borough force is annually inspected by one of His Majesty's Inspectors of Constabulary, whose duty under the County and Borough Police Act, 1856 (s. 15) (*u*), is to visit and inquire into the state and the efficiency of the police force, the state of the police stations and other police premises, and whether the provisions of the Police Acts and Regulations are duly observed and carried into effect.

Instructions as to general police administration from time to time are issued by the H.O., and the Police Pensions Acts and the Police Regulations apply to all borough police forces. The effect is that the Secretary of State is in the position of a central co-ordinating authority. McCARDIE, J., in *Fisher v. Oldham Corpn.* (*a*), referred in detail to the fullness of central administrative control of the police, and observed that the Home Secretary is the central police authority.

Thus, the control over its police force exercised by the watch committee of a borough is tempered by the fact that the borough council must approve its expenditure, that the requirements of the Secretary of State should be complied with, and that the control must be exercised in accordance with the Police Acts and Regulations.

(*p*) 12 Statutes 844.

(*r*) S.R. & O., 1920, No. 1484.

(*t*) 14 Statutes 618.

(*a*) [1930] 2 K. B. 364.

(*q*) 10 Statutes 637.

(*s*) 10 Statutes 622, 663.

(*u*) 12 Statutes 815.

The executive control of a borough force is exercised by the chief constable, who is appointed by, and is responsible to, the watch committee. See title CHIEF CONSTABLE. [383]

4. Organisation of a Borough Force.—The watch committee is responsible for securing that the borough police force is adequate for the policing of the borough (Municipal Corporations Act, 1882, s. 191 (1)) (b), but the authorised establishment of the several ranks is subject to the approval of the Secretary of State (Police Regulation 5). Any alteration in the authorised strength should have the prior approval of the H.O.

The prescribed ranks are: chief constable (or head constable), superintendent, inspector, sergeant and constable; and the ranks of assistant chief constable, chief superintendent, chief inspector, sub-divisional inspector, sub-inspector, station sergeant and acting sergeant may also be authorised by the Secretary of State (Police Regulations 1 and 2).

All members of the force hold the office of “constable.”

The number and designations of intermediate ranks will depend on the size of the force. In large borough forces there may be chief superintendents and chief inspectors; in small forces there may only be inspectors: but in all police forces there are sergeants.

The area within the jurisdiction of a borough police force is known as its police district.

A borough is usually marked out into beats, a beat being the area to which a constable is assigned for duty during his tour of duty, which under Police Regulation 34 is normally eight hours per day.

Several beats are grouped for supervision by a sergeant or inspector, and the group is termed a section.

In a large borough a number of sections may be grouped for supervision by an inspector and the whole area thus supervised is known as a sub-division. A number of sections or sub-divisions grouped together for control by a superintendent or other officer, who is directly responsible to the chief constable, is known as a division. Therefore the police districts of a borough may be organised into divisions, sub-divisions, sections and beats, and the terms “division,” “sub-division” and “section” are also applied to the body of men acting under the direction of the superintendent, inspector or sergeant, as the case may be.

Thus, the policing of a borough is based on the beat system, and the organisation should be such that the beats are adequately patrolled under proper supervision by superior officers.

Provision also has to be made for station, reserve and other duties, including in many boroughs, motor patrolling, police ambulances, and traffic duty.

In addition to providing for what may be termed “ordinary police work,” many borough forces have to maintain departments, including the headquarters administrative (office) staff, the criminal investigation or detective staff, and other departments for specialised work such as the training of recruits, the serving of summonses and the execution of warrants, the disposition of lost property, and inquiries on behalf of the coroner.

These special departments are staffed by police officers.

The office staff at the headquarters of a force may be assisted by female typists who are in effect municipal employees, and in several forces it is the practice to employ youths as boy clerks, on the understanding that they will in due course become members of the police force provided they possess the necessary qualifications.

The C.I.D. is composed of police officers transferred from the uniform branch as possessing qualifications for the performance of detective work. They perform duty in plain clothes and are mainly engaged in inquiry work in the detection of crime.

Recruits to the force are trained by one or more experienced police officers, and the assistance of municipal school teachers may be utilised in respect to instruction in general educational subjects. Police officers afford instruction in police duties and in all subjects in which a police officer requires to be instructed.

In large forces it is convenient to detail a number of police officers for the purpose of serving summonses and executing warrants directing imprisonment or the payment of fines, and this department works in close conjunction with the police courts.

A considerable amount of lost property comes into the possession of the police, and a large number of inquiries are made of the police by persons who have lost property. A system of recording lost property and property found is essential, and this can best be managed by a police department established for the purpose.

The coroner must rely on the police to make the inquiries necessary for inquests, and this work, which to a great extent is detective work, can be efficiently performed by selected police officers specially assigned for the purpose.

In some borough forces, police women are employed as members of the police force, and their employment is regulated by the Police (Women) Regulations, 1931 (*c*), made under sect. 4 of the Police Act, 1919 (*d*).

The strength of a police force may be at any time supplemented by :

(1) Additional constables appointed for special purposes such as the policing of docks, the assisting of a municipal department, etc., but the cost of such constables must be defrayed by the company, department, etc., which employs them (see County Police Act, 1840, s. 19 (*e*), and Town Police Clauses Act, 1847, s. 7) (*f*), and deducted from the police expenditure towards which the Government grant is payable.

(2) First police reservists, that is men of approved character and qualifications, usually police pensioners and ex-members of His Majesty's Forces, who are temporarily engaged (usually on a week's notice) and, when required, attested as constables. While so employed they are supplied with police uniform and equipment, and act in all respects as members of the police force for the time being.

(3) Special constables. See title SPECIAL CONSTABLES. [384]

5. Jurisdiction of a Borough Constable.—A borough constable has all the powers and privileges, and is liable to all the duties and responsibilities, that any constable has in his constablewick at common law or by statute, in his borough, in the county in which his borough or any part thereof is situate, and in every county being within seven miles

(*c*) S.R. & O., 1931, No. 878.

(*d*) 12 Statutes 868.

(*e*) *Ibid.*, 791.

(*f*) *Ibid.*, 805. This provision is now only in force in areas to which it has been applied by a local Act.

from any part of his borough and in all liberties in any such county (Municipal Corpns. Act, 1882, s. 191 (2)) (g). By sect. 2 of the County and Borough Police Act, 1859 (h), a borough constable was not, as such constable, to be required to act out of his borough except in execution of warrants of justices of his borough or in pursuance of directions from the watch committee in case of special emergency, and the section made similar provision as regards a county constable acting in a borough. The Police Act, 1890, s. 25 (i), allows police authorities to enter into agreements for mutual aid, whereby a force may be assisted by constables of another force who for the time being are to be deemed for all purposes constables of the aided force, and have the like powers, duties and privileges. Since 1925, all the forces of England and Wales have entered into a common mutual aid agreement, and on the request of the police authority or of the chief constable of a force, if the power has been delegated to him, the members of other forces may be called in to act as constables within the jurisdiction of the aided force.

Normally a borough constable does not perform duty outside the area of his borough unless he is so directed by his superior officer. However, boundaries are often disregarded where offences are committed, and police motor patrols in particular now travel on duty by arrangement outside the areas of their boroughs. When outside his police district, the constable, as a private person apart from his office of constable, has power to deal with felony and breach of the peace, but naturally, unless acting on specific instructions, he should not deal with minor breaches of the law which are best left to be dealt with by the police of the locality. [385]

6. Status of a Borough Constable.—A borough constable, as stated in sect. 191 (2) of the Municipal Corpns. Act, 1882 (k), has all the powers and privileges of a constable, at common law or by statute. He is by the common law a conservator of the peace with a general duty to keep the King's peace.

He serves the Sovereign in the office of constable, as stated in his declaration of office (see "Appointment of a Borough Constable" later).

He is not an agent of the watch committee, but is personally liable for any misuse of his powers or any act in excess of his authority as constable.

The status of a constable was exhaustively discussed in the case of *Fisher v. Oldham Corpn.*, 1930 (l), in which it was decided that the corpn. were not responsible in law for the arrest or detention of the plaintiff, as in effecting the arrest the police were not acting as the servants or agents of the defendants, but were fulfilling their duties as public servants and officers of the Crown.

In the course of his judgment McCARDIE, J., dealt with the common law status of police officers, remarking that it was clear from *Mackalley's Case* (1611) (m), that a constable was regarded as a servant or minister of the King. The whole *ratio decidendi* of *Coomber v. Berks JJ.* (n), was that the police were the servants of the Crown and not of the local authority. The oath of an Oldham constable was to faithfully discharge his duties as a constable and was not an oath to act as a servant of the corpn.

(g) 10 Statutes 636.

(i) *Ibid.*, 850.

(l) [1930] 2 K. B. 364; Digest (Supp.).

(n) (1883), 48 J. P. 421; 9 App. Cas. 61.

(h) 12 Statutes 820.

(k) 10 Statutes 636.

(m) 9 Co. Rep. 65 b.

He pointed out that the Municipal Corpns. Act, 1882 (o), gave but limited powers to the watch committee, and that *prima facie*, a police constable is not the servant of the borough, but a servant of the State, a ministerial officer of the central power, though subject, in some respects, to local supervision and local regulation. Only in a special and limited sense could a police officer be said to be in the employ of a municipal corpn.

To hold that the normal relation of master and servant or principal and agent, exists between a police officer and the municipal corpn. in whose area he acts would be contrary, in his view, to statute, to established decision, and to sound public policy.

MCCARDIE, J., also referred with approval to the Australian case of *Ennever v. The King* (1906) (p), in which GRIFFITH, C.J., said that the powers of a police officer, as police officer, whether conferred by common or statute law, are exercised by him by virtue of his office and cannot be exercised on the responsibility of any person but himself, and that a constable, when acting as a police officer, is not exercising a delegated authority but an original authority. [386]

7. Powers of a Borough Constable.—A borough constable, as stated above, has all the powers and privileges of a constable. These "powers and privileges" are not specifically defined by statute, but they include the power of arrest without warrant at common law of persons whom he sees committing treason, felony or breach of the peace, whom he suspects on reasonable cause of having committed felony, who are charged by others, apparently with good reason, with having committed treason or felony, or who assault or obstruct him in the execution of his duty; the powers of arrest conferred on him for many offences by many statutes; and the power to arrest on warrant duly issued by a justice. A constable has great powers of arrest, but as he is personally liable for his acts he should exercise these powers with intelligence and discretion.

Where sects. 15 and 17 of the Town Police Clauses Act, 1847 (q), have been applied to a borough by a local Act, a borough constable is empowered to arrest without warrant any person found committing any offence, punishable either upon indictment or as a misdemeanor upon summary conviction by virtue of the Act of 1847 or any later Act with which that Act is incorporated, and a person arrested for any such offence which is punishable summarily may be released by the police on bail.

Also a borough constable may, while on duty, apprehend any idle and disorderly person whom he finds disturbing the public peace, or whom he has just cause to suspect of intention to commit a felony; and a borough constable at a police station may release on bail any person arrested without warrant for a petty misdemeanor (Municipal Corpns. Act, 1882, ss. 193, 227) (r). As constable, he has a general power to enforce the criminal law and he may be regarded as acting in the execution of his duty when inquiring into any breach of the law that it is his duty to enforce.

In addition to other general statutes protecting him in the execution of his duty, the Town Police Clauses Act, 1847, s. 20 (s), and the Municipal Corpns. Act, 1882, s. 195 (t), direct that any person may on

(o) 10 Statutes 576.

(q) 12 Statutes 806, 807.

(s) 12 Statutes 807.

(p) 3 C. L. R. 969.

(r) 10 Statutes 637, 649.

(t) 10 Statutes 638.

summary conviction be fined up to five pounds for assaulting or resisting, or aiding or inciting any person to assault or resist, a borough constable in the execution of his duty. The Borough Constables Act, 1883 (*u*), provided that the provision in the Act of 1882 should not be taken to have repealed sect. 20 of the Act of 1847.

In many respects the powers of a borough constable may be inferred from his duties, as when directed by law to perform any public duty he is armed with the power to carry it out. [387]

8. Duties of a Borough Constable.—The general duty of every member of a police force is to carry out all lawful orders, and at all times punctually and promptly to perform all appointed duties and attend to all matters within the scope of his office (Police Regulation 33).

Within the scope of his office come the preservation of the peace, the prevention and detection of crime, the general protection of the public and the enforcement of the law.

As is the case with respect to his powers, the duties of a constable are not, and could not well be, prescribed in detail.

Indeed, the opinion has been expressed that it would be wiser to swear the constable to the due execution of his office in general rather than to descend to particulars of his duties.

Police duty, apart from the enforcement of local Acts, bye-laws and orders, is much the same in every police force, and generally speaking the constable is engaged in guarding the public against all dangers to person and property. The Town Police Clauses Act, 1847, s. 14 (*a*), directs borough constables to keep watch and ward within the borough, and to use their best endeavours to prevent all felonies, misdemeanors and breaches of the peace.

The County and Borough Police Act, 1856, s. 7 (*b*), orders that borough constables, in addition to their ordinary duties, shall perform all such duties connected with the police in their borough as the watch committee from time to time direct and require. The expression "duties connected with the police" is not defined, but Police Regulation 73 (see "Extra Duties") refers to the Secretary of State the power of deciding what duties the police may not properly be required to perform.

This direction to perform duties "connected with the police" is supplemented by the power of the watch committee to make regulations for preventing neglect or abuse and for making borough constables efficient in the discharge of their duties (Municipal Corpn. Act, 1882, s. 191 (*3*)) (*c*).

Sect. 191 (*2*) of the last quoted Act further directs that a borough constable shall also obey all such lawful commands as he receives from any Justice having jurisdiction in the borough or in any county in which the constable is called on to act. [388]

9. Extra Duties.—In dealing with the allowances which may be paid to members of a police force, Police Regulation 73 states that an extra duty allowance is permissible where a constable is required to undertake any of the following extra duties :

Inspection under the Diseases of Animals Act ; inspection of weights and measures ; inspection under the Food and Drugs Act and the Fertilisers and Feeding Stuffs Act ; inspection under the Explosives Act

(*u*) 10 Statutes 685.

(*b*) *Ibid.*, 814.

(*a*) 12 Statutes 806.

(*c*) 10 Statutes 637.

and the Petroleum Acts; inspection under the Shops Acts; and duties on behalf of the local authority in respect of local taxation licences.

Such an allowance is not permissible for the enforcement of the Cinematograph Act, or of borough bye-laws, or for billeting, issue of pedlars' certificates, or for the inspection of domestic servants' registries, common lodging-houses, hackney carriages, licensed boats, beach trading, markets, fire appliances, and street lamps.

If a police officer performs duties as assistant relieving officer he may be paid an annual allowance if it is established that the duties cause a material addition to his normal work.

The Regulation further directs that the police shall not be required to perform the following duties: Any work not connected with police duty which in the opinion of the Secretary of State the police may not properly be required to perform; town crier; mayor's attendant; collection of market tolls; collection and recovery of monies due under maintenance orders under the Summary Jurisdiction (Separation and Maintenance) Acts, 1895 to 1925 (*cc*); collection and recovery of monies due under affiliation orders.

However, this prohibition does not preclude the collection of monies by a police officer appointed, with the consent of the police authority, collecting officer under the Affiliation Orders Act, 1914, or under the Criminal Justice Administration Act, 1914, or the receipt of monies tendered at a police station; nor does it affect the duties of the police in the execution of any warrant.

The Regulation is here given *in extenso* as many of the above-mentioned duties may be placed on the police in boroughs.

In this connection it should be mentioned that the watch committee may employ constables, wholly or partially, as firemen under the Police Act, 1893 (*d*), but subject to the consent of the constable being obtained.

The enforcement of the Explosives Acts, 1875 and 1923 (*e*), and the Petroleum (Consolidation) Act, 1928 (*f*), is usually carried out by the police, and a police officer may be appointed inspector under these Acts. On behalf of the local authority he will issue licences, inspect premises and take proceedings for breaches of the Acts. This work is of a special nature, and in a large borough the inspector, with any police assistants necessary, will devote his whole time to it.

The same observations apply to the inspection of hackney carriages, though such work has been reduced in extent owing to the fact that public vehicles, other than hackney carriages, trams and trolley vehicles, are now termed public service vehicles, and are under the jurisdiction of the Traffic Commissioners, acting under the powers conferred by Part IV. of the Road Traffic Act, 1930 (*g*). [389]

10. Traffic Control in a Borough.—A constable on duty has full power, under sect. 49 of the Road Traffic Act, 1930 (*h*), to regulate all vehicular traffic; and other sections of the Act, together with the Highway Acts and other Acts, have created traffic offences with which any constable may deal.

However, the borough constable may be given further powers and duties under sect. 21 of the Town Police Clauses Act, 1847 (*i*).

(*cc*) 9 Statutes 405, 413, 414, 965.

(*e*) 8 Statutes 385, 447.

(*g*) 23 Statutes 654.

(*i*) 19 Statutes 36.

(*d*) 12 Statutes 855.

(*f*) 13 Statutes 1170.

(*h*) *Ibid.*, 647.

This section applies to boroughs and urban districts in general, and to those rural districts to which it has been extended by order of the M. of H. (P.H.A., 1875, ss. 171 and 276) (*k*).

Under this section the local authority may from time to time make orders for the route to be observed by all carts, carriages, horses and persons, and for preventing obstruction of the streets within the borough or district in all times of public processions, rejoicings or illuminations, and in any case when the streets are thronged or liable to be obstructed; and may also give directions to the constables for keeping order and preventing any obstruction of the streets in the neighbourhood of theatres and other places of public resort; and any wilful breach of any such order is punishable by penalty not exceeding 40s.

Under the Road Traffic Act, 1930, sect. 46, as amended by the Road and Rail Traffic Act, 1933, sect. 29 (4), a borough council may, subject to confirmation by the Minister of Transport, make an order prohibiting or restricting the driving of vehicles on any specified road (*l*), and a borough highway authority have power, by order or by notice, temporarily to prohibit or restrict traffic on roads (*m*). [390]

11. Appointment of a Borough Constable.—The watch committee are responsible for the appointment of borough constables who are to be sworn in before a Justice having jurisdiction in the borough (Municipal Corpn. Act, 1882, s. 191) (*n*).

By the Promissory Oaths Act, 1868, s. 12 (*o*), a declaration has replaced the ancient oath of office, and by this declaration a constable solemnly, sincerely and truly declares and affirms that he will well and truly serve the Sovereign in the office of constable; that he will act as a constable for preserving the peace and preventing crimes and offences, and for apprehending offenders against the peace; and that while he continues to hold the office he will discharge the duties thereof to the best of his skill and knowledge faithfully, according to law, without fear, favour, affection, malice or ill-will.

The chief constable selects persons suitable for the force, persons who come within the prescribed age and height limits, and who satisfy the conditions as to character, constitution, education, etc., laid down in Police Regulations 7 and 8.

These recruits may come before the watch committee for formal appointment. Appointment itself dates from the day on which the recruit becomes a member of the force and is attested as a constable, but a constable is on probation for two years from that date, and during that period the chief constable has power to dispense with his services if he considers that the probationary constable is not fitted, physically or mentally, to perform the duties of his office or that he is not likely to become an efficient and well-conducted constable (Police Regulations 10 and 11).

Constables additional to the authorised strength of a force may be appointed on the application of, and at the expense of, persons needing their services (see "Organisation of a Borough Force"). [391]

12. Pay and Conditions of Service.—The pay and allowances of all members of the English and Welsh police forces must accord with the Police Regulations, which are made by the Secretary of State under sect. 4 of the Police Act, 1919 (*p*), after their submission in draft to the

(*k*) 13 Statutes 696, 741.

(*m*) S. 47; 23 Statutes 645.

(*o*) 3 Statutes 383.

(*l*) 23 Statutes 643; 26 Statutes 895.

(*n*) 10 Statutes 636.

(*p*) 12 Statutes 868.

police council (created by that Act) which may make representations regarding any proposed regulation.

In addition the scale of pay of each force is subject to the approval of the Secretary of State (Police Regulation 47), and no allowances may be paid except such as are prescribed by the Regulations or specially authorised by the Secretary of State (Police Regulation 64).

Each force has its own conditions of service, which in the case of a borough force are promulgated by the authority of the watch committee. These conditions of service are accepted by every entrant to the force as one of the bases of his contract of service.

The conditions are fairly uniform throughout the borough forces, and model police conditions of service were drawn up by a sub-committee of the police council (Report dated January 15, 1925). [392]

13. Discipline of a Borough Police Force.—A code of offences against discipline is given in the appendix to the Police Regulations, 1920 (*q*), and the watch committee, under sect. 191 (3) of the Municipal Corpn. Act, 1882 (*r*), may make regulations for preventing neglect or abuse.

The watch committee is the disciplinary authority for borough forces, and offences against discipline are to be dealt with in the manner prescribed by Police Regulations 12 to 26.

A constable against whom a charge of indiscipline is preferred is entitled to appear, with witnesses on his behalf, before the chief constable (Police Regulations 16—18).

The chief constable of the borough, subject to any general directions of the watch committee, shall either dismiss the case, remit it to the watch committee for further hearing, or award a punishment as prescribed in Regulation 21, but any punishment other than a caution is subject to confirmation by the watch committee. A borough constable, who is punished by the chief constable, is entitled to appear before the watch committee to appeal against the decision upon giving notice in writing to the chief constable forthwith, or at any later date not less than three clear days before his case is laid before the committee (Police Regulation 20).

Punishment ranges from dismissal to reduction, fine, reprimand or caution. The watch committee or the chief constable, as the case may be, control the procedure on the hearing of a disciplinary charge. The witnesses are not sworn. The accused is not entitled to legal representation, but he must be allowed to have, if he so desires, another serving member of the force selected by himself to assist him in presenting his case (Police Regulation 18).

Under the Municipal Corpn. Act, 1882, the watch committee, or any two Justices having jurisdiction in the borough may at any time suspend any borough constable whom they think negligent in the discharge of his duty or otherwise unfit for the same (sect. 191 (4)), and a borough constable, on summary conviction of neglect of duty or of disobedience to a lawful order, is liable to ten days' imprisonment or to a fine of 40s. or to be dismissed from his office (sect. 194) (*s*).

The watch committee, if they think that any borough constable is remiss, negligent in the discharge of his duty or otherwise unfit for the same, may suspend and fine and reduce him to an inferior rank (County and Borough Police Act, 1859, s. 26) (*t*), and may for the same reasons

(*q*) S.R. & O., 1920, No. 1484.

(*s*) *Ibid.*, 637.

(*r*) 10 Statutes 637.

(*t*) 12 Statutes 822.

suspend and dismiss him—dismissal at once determining all powers vested in him as a borough constable (Municipal Corps Act, 1882, s. 191 (4), (5)) (u).

These early disciplinary powers of dismissal and reduction were saved by sect. 21 of the Police Pensions Act, 1921 (a), which states that nothing in the Act is to prejudice any existing right of dismissing any member of the force or requiring him to resign as an alternative to dismissal, or reducing him to any lower rank or lower rate of pay.

However, it would appear that the power of the disciplinary authority to punish members of the force must be exercised in the manner prescribed by the Police Regulations, 1920, as indicated by the cases of the *Chief Constable of St. Helens*, which in 1927 was considered by a tribunal of inquiry, and of *Wallwork v. Fielding* (b), which are referred to under "Retirement, etc., of a Chief Constable" (title CHIEF CONSTABLE).

If a member of a force is dismissed, or required to resign as an alternative to dismissal, he has the right to appeal to the Secretary of State, and the procedure will be as directed by the Police (Appeals) Rules of July 29, 1927 (c), made under the Police (Appeals) Act, 1927 (d).

Notice of appeal in the form prescribed in the schedule to the Rules and accompanied by a statement of the grounds of appeal and the names of witnesses with a statement of what they can prove, must be sent to the Secretary of State and to the watch committee within ten days from the date when the appellant received on the misconduct form the notification of the order against which he desires to appeal (Rule 3). The Secretary of State may allow or dismiss the appeal or vary the punishment, either on the documents submitted together with any further statements he may require, or after considering the report of any person or persons he may have appointed under the Act to hold a sworn inquiry into the case (sect. 2). [393]

14. Retirement, etc., from a Borough Force.—Under sect. 4 of the County and Borough Police Act, 1859 (e) (see also County Police Act, 1839, s. 13, and Town Police Clauses Act, 1847, s. 10 (f)), a borough constable cannot resign his office or withdraw himself from the duties thereof, unless he is expressly allowed so to do in writing by his chief constable or until after he has given to his chief constable one month's notice of his intention to resign.

Any borough constable who resigns or withdraws from his duty without such leave or notice is liable to a penalty not exceeding £5 on summary conviction before any two Justices (g). All arrears of pay then due to him are, without further proceeding in respect of his offence, liable to be forfeited (h).

If a constable has completed twenty-five years' approved service and has given three months' written notice, or such shorter notice as the police authority may accept, to the police authority of his intention to retire he is entitled on the expiration of such notice to retire on an ordinary pension for life (Police Pensions Act, 1921, s. 2 (1) (a) (i)). See title POLICE PENSIONS.

(u) 10 Statutes 637.

(b) [1922] 2 K. B. 66; 37 Digest 180, 24.

(d) 12 Statutes 898.

(f) *Ibid.*, 778, 805. The former section seems to be extended to borough police by s. 4 of the Act of 1859.

(g) County and Borough Police Act, 1859, s. 4, as amended by the County and Borough Police Act, 1919; 12 Statutes 821, 873.

(h) *Ibid.*

(a) 12 Statutes 884.

(c) S.R. & O., 1927, No. 680.

(e) *Ibid.*, 821.

(i) 12 Statutes 874.

If a deduction is proposed to be made from the actual service of a borough constable in reckoning the "approved service," the decision of the chief constable is subject to the approval of the watch committee (Police Pensions Act, 1921, s. 7 (2) (*k*)). A chief constable or assistant chief constable appointed after August 28, 1921, cannot, except with the consent of the watch committee, retire without medical certificate on an ordinary pension unless he has attained the age of 60 (*ibid.*, s. 2 (3) (*l*)).

If a member of a borough force attains the prescribed age of compulsory retirement (sergeants and constables 55, superintendents and inspectors 60, chief constables and assistant chief constables 65), he must retire on attaining that age, unless his service is extended for a further period, in no case exceeding 5 years, with the approval of the watch committee (Police Pensions Act, 1921, s. 1 (*m*)).

However, this provision as to compulsory retirement does not apply to a member of a force who was serving on August 28, 1921, unless and until he has completed the service necessary to qualify him to retire without medical certificate on pension equal to two-thirds of his pay, or if he had before June 23, 1906, attained a rank above that of inspector (Police Pensions Act, 1921, s. 29 (1) (*b*) (*n*)).

Where a borough constable is dismissed or ceases to belong to the borough force, all powers vested in him as a constable in that borough immediately cease (Municipal Corpns. Act, 1882, s. 191 (5) (*o*)).

All clothing and articles of equipment issued are for use in the performance of duty; they do not become the property of the individual member of the force and must be delivered up by him on leaving the force (Police Regulation 88).

The Town Police Clauses Act, 1847, s. 11 (*p*) (following sect. 14 of the County Police Act, 1839 (*q*)), directs that a borough constable appointed under the Act who is dismissed or ceases to hold and exercise his office shall forthwith deliver up all the clothing, accoutrements, appointments and other necessities which have been supplied to him for the execution of his duty, on pain of imprisonment not exceeding one month, and any Justice may issue his warrant to search for and seize all such articles not so delivered up wherever the same are found. [394]

London.—This subject is dealt with under the titles METROPOLITAN POLICE, COMMISSIONER OF POLICE. [395]

(*k*) 12 Statutes 877.

(*m*) *Ibid.*, 873.

(*o*) 10 Statutes 637.

(*q*) *Ibid.*, 779.

(*l*) *Ibid.*, 874.

(*n*) *Ibid.*, 887.

(*p*) 12 Statutes 805.

BOROUGH SURVEYOR

See BOROUGH ENGINEER AND SURVEYOR.

BOROUGH TREASURER

See TREASURER.

BOROUGH, ROYAL

See ROYAL BOROUGH.

BORROWING

	PAGE		PAGE
GENERAL - - - - -	199	METHODS OF REPAYMENT - - -	210
ADVANTAGES AND DISADVANTAGES		The Instalment Method - - -	211
OF BORROWING - - - -	200	The Annuity Method - - -	212
BORROWING POWERS - - -	202	Sinking Funds - - - -	212
GOVERNMENTAL SANCTIONS TO		Rate of Accumulation - - -	213
LOANS - - - - -	203	Adjustments of Sinking Fund -	214
FORM OF SANCTION - - -	204	Redemption Funds - - -	215
LOANS NOT REQUIRING GOVERN-		UTILISATION OF REDEMPTION AND	
MENTAL SANCTION - - -	204	SINKING FUNDS FOR NEW	
RETURNS TO MINISTER - - -	205	CAPITAL PURPOSES - - -	216
FORMS OF BORROWING - - -	205	CAPITAL ESTIMATES - - -	218
SECURITY FOR LOANS - - -	206	FUNDED AND UNFUNDED DEBT -	219
EARMARKING LOANS TO BORROW-		CAPITAL ASSETS - - - -	219
ING POWERS - - - - -	206	LOAN CONSOLIDATION - - -	220
TRUSTEE SECURITIES - - -	207	CAPITAL FUND - - - -	221
REPAYMENT OF LOANS - - -	207	LONDON - - - - -	223
General - - - - -	207	City Corporation - - -	224
Periods for Repayment - - -	209	Metropolitan Borough Councils	224
Equation of Loan Periods - -	210	Metropolitan Water Board -	224
Date of Repayment - - -	210		

See also titles :

ACCOUNTS OF LOCAL AUTHORITIES ;
 AUDIT ;
 AUDITORS ;
 BANKERS' AND OTHER OVER-
 DRAFTS ;
 BILLS, BORROWING BY ;
 BONDS ;

CAPITAL EXPENDITURE OUT OF INCOME ;
 INCOME TAX ;
 LOCAL LOANS ;
 MORTGAGES ;
 PUBLIC WORKS LOANS ACTS ;
 REDEMPTION OF CAPITAL EXPENDITURE ;
 STOCK.

General.—The recurrent plea for the application of business methods in local administration does not always take into account the essential differences (in nature and motive) between a local authority and a business undertaking. Transactions of the latter are undertaken in pursuit of profit and are classified in accounts into capital and revenue. Capital may be provided by personal investment of the proprietor, the introduction of a partner or, in the case of a limited company, an issue of share capital or mortgage debentures. In the case of a local authority, however, transactions are entered into in order to provide a "service," the ultimate liability for which is a charge on the local rate.

The usual classification of transactions into revenue and capital is replaced, in the case of a local authority's accounts, by a division of expenditure into (1) expenditure which must be charged against the rate or other revenue for a financial year, and (2) expenditure which may be spread over a term of years. It is to finance expenditure of this latter class that borrowing powers are conferred on local authorities to be exercised by raising loans from the investing public.

In earlier years it was possible to spread expenditure over a period of years by the council arranging with the creditor for payment by deferred instalments, but with the growth of municipal activity this proved to be unworkable, and it became the practice to mortgage some specific security of the authority. This method operated satisfactorily for a period, but with further developments the mortgaging of specific assets created complications, and so a system of mortgaging as security the whole of the rates and revenues of the authority has come into vogue.

During this period of development, the methods by which a local authority can borrow have also been changing and improving, and now local authorities are authorised to borrow money in a variety of ways, the most popular of which are the issue of stock, mortgage loans, local bonds, and bank overdrafts.

Although a local authority can thus raise money for capital purposes readily, it is necessary that statutory authority should exist allowing the authority to borrow for the particular purpose in view. Usually the statutory power requires that the sums borrowed under it should also be specifically approved or sanctioned by the appropriate Government department. Money borrowed by a local authority must also be repaid within a certain specified period, since a local authority is unable to create irredeemable capital in the manner which is appropriate to private enterprise. It will therefore be found that a sanction given by a Government department to a local authority to borrow money invariably imposes a condition that the loan should be paid off within a stated period of years.

Money borrowed by a local authority is described as the loan "debt" of the authority, but this description, although strictly correct, tends to obscure the real comparison with the share capital of a commercial undertaking. In considering this relationship, it is important to bear in mind that the debt of a local authority is incurred substantially for the purpose of acquiring assets, the majority of which are, to a greater or less extent, productive of revenue. In this connection the debt of a local authority differs from national debt, which is not generally represented by tangible assets. [396]

Advantages and Disadvantages of Borrowing.—As has been explained, the power to borrow is essential to a local authority for the purpose of the purchase of costly assets. Any attempt to increase local rates by a sum sufficient to provide large sums of money for material capital development would be met by very strong opposition from local ratepayers. The small ratepayers would object to the payment of large sums for services which they possibly might never live to enjoy to the full extent, while the commercial community would prefer to equate their rate liabilities, instead of paying a large sum in one year followed by a much diminished amount in the immediately succeeding period.

The argument that borrowing provides facilities for easy spending is to a certain extent undoubtedly true, but deferring capital expenditure

is not necessarily economy. The alternative to borrowing, *i.e.* the restriction of necessary or beneficent services to such as could be fairly provided out of current revenue, might not only retard progress, but might, in the long run, prove more expensive.

The power to borrow should, however, be exercised with the greatest care, because persistent borrowing may defeat its object, *viz.* to spread the burden equitably over the useful life of the asset. Every local authority should therefore consider whether it is wiser to borrow for a purpose which could not unreasonably be defrayed direct from revenue. The cost of an asset to an authority, if paid for by means of borrowed money, is greater than if the payment is made direct from revenue, since the authority is required to find interest on the capital borrowed and eventually to repay the whole capital sum.

A simple illustration will show the effect of continued borrowing, which, it should be said, has been exemplified in the history of many local authorities. Assume a local authority has borrowed £10,000 a year for 40 years at 5 per cent. and has been repaying the borrowed capital by the instalment method. By the sixteenth year the charge for interest and repayment amounts to £10,500, increasing yearly until in the fortieth year it is in excess of £20,000, *i.e.* more than double the sum borrowed in that year. Further, the *average* yearly debt charge throughout the period is in excess of £12,000 (as compared with the sum of £10,000 borrowed each year) and at the end of the period there is an outstanding debt of £195,000.

It may be said, therefore, that the policy of a local authority with regard to borrowing should be adopted with the following considerations in view :

1. That borrowing from year to year for any and every purpose of a permanent character may not secure the best value for the money spent and may not attain the object in view of spreading the burden over the period of benefit.
2. That borrowing should be restricted within the narrowest possible limits, generally to non-recurring or exceptional expenditure.
3. That regular recurring expenditure of a capital nature should be met from revenue, the charge being equalised as fairly as possible by a programme which provides for approximately the same amount to be spent each year.
4. That where money for defraying the cost of capital assets is provided out of current revenue it is likely to be more carefully spent than if the money had been borrowed.
5. That borrowing for capital expenditure entails considerable additional cost in connection with the works or assets provided.

Some advocates of borrowing contend that the less money taken from the pockets of the ratepayers the better it is for the community as a whole, since the ratepayer is able to utilise his money in a manner which is of greater benefit to the community. This is known as the "fructification" argument, but on close examination it is now generally accepted as having little or no validity in the case of local authorities who have to provide money for capital expenditure year after year, now for one purpose, now for another, in seemingly unending succession, for it is the cumulative effect of a long continued course of borrowing which reveals its financial unsoundness.

Usually local authorities will take advantage of their borrowing powers in conditions such as the following :

1. When the asset acquired is likely to be of benefit for a number of years, and is of an exceptional character, *e.g.*, a town hall or public offices.
2. When the value of an asset is progressive, and the full benefit will not be experienced for a number of years, *e.g.* the construction of a reservoir or trunk mains for a water undertaking.
3. When the asset, although diminishing in value, has a life of several years, *e.g.* a new fleet of motor omnibuses.

On the other hand it is generally accepted that the expenditure on work of a capital nature which is constantly recurring, or is perhaps continuous, should be paid direct from revenue. It will thus follow that the money to be spent in renewing the fleet of omnibuses mentioned above would be provided from revenue and not from a further loan. Similarly, expenditure on street improvements, other than those of major importance, can generally be defrayed from revenue, and in all cases regard should be paid to the total capital requirements of a local authority over a period. See also title CAPITAL EXPENDITURE OUT OF INCOME. [397]

Borrowing Powers.—A local authority must possess statutory borrowing powers before a loan can be raised. Generally such powers are contained in public general Acts of Parliament. In other cases authority is contained in a local Act which has been promoted by the local authority concerned. Until the passing of the L.G.A., 1933, provisions empowering to borrow were contained in a variety of public statutes, but the L.G.A., 1933, has now consolidated the various provisions contained in a large number of Acts, and comprehensive powers are contained in sect. 195 (a). This section provides that a local authority may, with the consent of the sanctioning authority, or in the case of a parish council, with the consent of the Minister of Health and the county council, borrow money for the following purposes :

1. The acquisition of land, which they have power to acquire.
2. The erection of buildings, which they have power to erect.
3. The execution of any permanent work, the provision of any plant or the doing of any other thing which the local authority have power to execute, provide or do, the cost of which the sanctioning authority considers should be spread over a period of years.
4. In the case of a county council to lend money to parish councils. (In this case the consent of the Minister of Health is not required.)
5. For any other purpose for which the local authority are authorised to borrow under any enactment or statutory order.

Subsequent sections of the Act deal with the modes of borrowing and periods for repayment.

A local Act for the specific purpose of borrowing money for capital works is only promoted by a local authority when it is not feasible to carry out the scheme of finance or to borrow money under a public general Act. This is because of the expense attached to the promotion of a local Act, a consent to a loan under the provisions of a public Act being comparatively inexpensive. Where it has been found necessary to promote a bill for the purpose of obtaining additional powers, clauses will be

included authorising the amount borrowed, the security to be given for the borrowed money, and the provisions for repayment.

It is not unusual for a local authority promoting a bill in Parliament for general purposes to include clauses authorising the borrowing of money for various purposes of a substantial nature, when it is desired to obtain from Parliament certain concessions, such as a longer period for repayment, or a deferring of the date upon which repayment must commence to operate, or the capitalisation of interest, not usually otherwise available. It is a matter of some difficulty to obtain similar concessions from a Government department. [398]

Governmental Sanctions to Loans.—It is not usually sufficient for an authority to have general statutory powers to borrow, but a specific sanction must be obtained in almost every case from the appropriate Government department before the loan is raised (for exceptions, see *post*, p. 204). The appropriate Government department is the M. of H., except in the following cases :

<i>Particulars.</i>	<i>Sanctioning Authority.</i>
Purposes of the Tramways Act, 1870 (<i>b</i>).	M. of T.
Purposes of the Light Railways Acts, 1896 (<i>c</i>) and 1912 (<i>d</i>).	M. of T.
Purposes of Part V. of the Road Traffic Act, 1930 (<i>e</i>).	M. of T.
Electricity Undertakings.	The Electricity Commissioners.

In addition to these sanctioning authorities, certain local authorities have also power to sanction loans to smaller authorities; thus county councils are empowered to sanction loans for parish councils within their area, and the L.C.C. is the sanctioning authority for loans required by metropolitan borough councils in connection with most purposes under the Metropolis Management Acts and Housing Acts, and under the Public Health (London) Act, 1891, in respect of mortuaries and hospitals. It should be observed that the provisions of the L.G.A., 1933, by sect. 308 (*f*), relating to borrowing do not apply to London (see *post*, p. 223).

To obtain a sanction an authority must comply with departmental requirements. In general the following procedure is necessary where an application for sanction is made to a Government department :

1. The local council must consider the work to be undertaken or the asset to be acquired, and must pass a resolution approving the scheme and authorising the application for a loan sanction.
2. The clerk to the authority will make a formal application for sanction stating the period required and enclosing
 - (a) a copy of the resolution of the council;
 - (b) detailed plans and estimates.
3. The Minister will consider the desirability or otherwise of holding a local inquiry. Should the inquiry be decided upon it will be held by an inspector of the Ministry after due public notice has been given. At the inquiry the authority will state its case for a sanction and the inspector will hear any objections which may be raised by ratepayers or other interested parties. After the inquiry the inspector will submit to the Minister a confidential report on the results of his investigation.

(*b*) 20 Statutes 6.

(*d*) *Ibid.*, 314.

(*f*) 26 Statutes 470.

(*c*) 14 Statutes 252.

(*e*) 23 Statutes 678.

4. The Minister will decide upon the desirability or otherwise of sanctioning the loan, and if it is approved will forward a formal sanction to the authority.

There is no right of appeal against the decision of a Government department, and if an authority considers that a loan is essential the only course available is to apply direct to Parliament through the medium of a private bill. Such a bill, however, would undoubtedly be opposed before the Parliamentary Committees by the Ministry who refused the loan.

A parish council has no right of appeal against the decision of a county council. [399]

Form of Sanction.—The form of sanction issued by a department is quite simple. It commences with a recital that the council of an authority have applied to the Ministry for sanction to borrow money for a purpose under the authority of the Act empowering the authority to borrow, and continues to the effect that the Minister has determined to sanction a loan of the amount specified in the sanction to be borrowed on the security of the revenues of the council, and repaid with interest within a stated term of years from the date of borrowing.

The council is not entitled to pay the salaries or wages of officers or employees of the permanent staff out of money borrowed under the sanction, except any additional remuneration as may become payable in respect of overtime or additional work carried out by the officers or employees in connection with the scheme sanctioned. This provision illustrates the distinction which has already been drawn between capital expenditure (in the commercial sense) and expenditure by a local authority which may be charged against a loan. A loan sanction must not be used to relieve the rates of a charge that would normally be borne on the rates. This condition is not usually contained in the formal sanction, but will be found in the letter to the clerk which invariably accompanies a loan sanction. [400]

Loans not Requiring Governmental Sanction.—The sanction of a Government department to the raising of a loan is unnecessary in those cases only in which a statutory borrowing power exists which may be exercised without additional authority. This obtains in the following cases :

1. Where a local Act has been obtained by a local authority which contains borrowing powers which are not stated to be subject to the sanction of a Government department.
2. Where a loan is raised on the credit of sewage lands and plant under the powers contained in sect. 235 of the P.H.A., 1875 (*g*).
3. In the case of a borough, where a loan is raised on mortgage of corporate land, etc., but it should be noted that the charging of the land needs the consent of the Minister (*h*).
4. In the case of temporary loans, whether by bank overdraft or otherwise, for the purpose of defraying expenses (including the payment of sums due by a local authority to meet the expenses of other authorities) pending the receipt of revenues

(*g*) 13 Statutes 724. See also L.G.A., 1933, s. 217 (*b*); 26 Statutes 423.

(*h*) *Ibid.*, s. 172 (*3*); *ibid.*, 401.

receivable in respect of the period of account in which those expenses are chargeable (such revenues having been taken into account in the estimates for that period), and where capital expenditure has to be defrayed pending the raising of a loan which has been authorised for the purpose (i).

5. In the case of borrowing for the purpose of repaying money previously borrowed by the local authority, or replacing money which, during the preceding twelve months, has been temporarily applied from other monies of the local authority in repaying money previously borrowed, and which at the time of such repayment it was intended should be replaced by borrowed money (k).
6. The City of London has preserved an ancient privilege which enables them to dispense with the sanction of a Government department to the raising of loans, and although some of their local Acts confer borrowing powers for specific works the time and method of repayment of the loans are in their discretion (see *post*, p. 225). [401]

Returns to Minister.—The clerk of a local authority is required by sect. 199 of the L.G.A., 1933 (l), to transmit to the Minister of Health a return showing the provision made by the local authority for the repayment of borrowed money. This return must be submitted, within one month after request by the Minister to forward the return, and the section supersedes any enactment or statutory order requiring a similar return to be rendered periodically. (See sub-sect. (6)).

The Minister has power to prescribe the form in which such returns should be made, and if he so requires he can insist that the return should be verified by a statutory declaration made by the treasurer or other person whose duty it is to keep the accounts of the local authority. If the Minister is not satisfied with the return, and it appears to him that the local authority :

- (a) have failed to pay an instalment or annual payment required to be paid;
- (b) have failed to appropriate to the discharge of any loan, any sum required to be so appropriated;
- (c) have failed to set apart any sum required for a sinking fund;
- (d) have applied any portion of a sinking fund to a purpose other than those authorised;

he may make an order directing that any sums specified in the order which must not exceed the amount in respect of which default has been made, shall be paid or applied in accordance with the terms of the order (l). If necessary, an order requiring such payments may be enforced, at the instance of the Minister, by *mandamus*.

If any person responsible for making a return in this connection fails to do so, he is liable on summary conviction to a fine not exceeding £20, and notwithstanding the recovery of any such fine the return may be enforced, at the instance of the Minister, by *mandamus* (l). [402]

Forms of Borrowing.—Having obtained the necessary authority to borrow, the authority has next to consider the best methods of raising

(i) L.G.A., 1933, s. 215; 26 Statutes 422.

(l) *Ibid.*, s. 199; *ibid.*, 415.

(k) *Ibid.*, s. 216; *ibid.*, 423.

the money required. The methods available, some of which, however, are not available to local authorities in general are as follows :

1. The issue of Stock. (See title STOCK.)
2. Loans on Mortgage. (See title MORTGAGES.)
3. The issue of Debentures or Annuity Certificates. (See title LOCAL LOANS.)
4. Through the medium of an Overdraft. (See title BANKERS AND OTHER OVERDRAFTS.)
5. A Loan from the Public Works Loan Commissioners. (See title PUBLIC WORKS LOANS ACTS.)
6. The issue of Bills. (See title BILLS, BORROWING BY.)
7. The issue of Bonds. (See title BONDS.)
8. The Utilisation of accumulated Sinking and Redemption Funds. (See *post*, pp. 212, 215.) [403]

Security for Loans.—Any loan raised by a local authority must be charged upon some specific security. Formerly it was the practice to empower authorities to borrow upon the security of specified undertakings, properties or revenues, the security varying with the purpose of the loan, but apart from a mortgage of sewage land and plant under the provisions of sect. 235 of the P.H.A., 1875 (*ante*, p. 204), and in the case of boroughs, a mortgage of corporate land, under sect. 172 of the L.G.A., 1933 (*m*), local authorities will give a similar security for each loan, and all monies borrowed will be charged indifferently on all the revenues of the authority. This is provided for in sect. 197 of the L.G.A., 1933 (*mm*), which also provides that all securities created by a local authority shall rank equally without any priority, with the exception that any priority existing on January 1, 1934, is not to be affected by that Act.

This common security which enables a common form of mortgage deed to be used for mortgage loans is a great boon to local authorities, since it simplifies procedure and enhances the credit of the authority. Lenders are in no doubt concerning the adequacy of their security. It has had the further advantage of developing the system of short-term mortgages, from which has evolved the mortgage or loan pool (see title MORTGAGES), and later the Consolidated Loans Fund (see title CONSOLIDATED LOANS FUND), which have enabled local authorities to take advantage of favourable monetary conditions and in this way reduce the average rate of interest payable on their loans. [404]

Earmarking Loans to Borrowing Powers.—It has been customary in the case of many local authorities to earmark particular mortgages to specific sanctions to borrow, although there does not appear ever to have been a statutory necessity for this procedure. The practice led to many complications, since in the event of a loan having to be repaid before the expiration of the period for which it was sanctioned, it was necessary to reborrow a part of the sum repaid, although ample money might be available in a sinking fund opened for another loan. It is not unusual to find a reference to the particular sanction in the mortgage deed, and indeed some lenders require the loan sanction to be deposited with them at the time of the loan being made. Such earmarking is quite unnecessary and it appears clear from the Accounts (Boroughs and Metropolitan Boroughs) Regulations, 1930 (*n*), that earmarking is not officially required, since the Second Schedule to the Order gives a direction that " a separate cash account shall be kept of all

(*m*) 26 Statutes 400.

(*mm*) *Ibid.*, 413.

(*n*) S.R. & O., 1930, No. 30.

monies raised . . . headed general loans," and further directs that amounts shall be transferred from that account to the appropriate cash account of the borrowing fund in accordance with the statutory borrowing power. The practice is growing of opening a mortgage pool, which is clearly contemplated by the Accounts Order. In such a mortgage pool individual loans raised lose their identity (see title MORTGAGES).

The avoidance of earmarking in this manner is of great advantage to local authorities and is a great saver of time and work. [405]

Trustee Securities.—It is obviously of advantage to a local authority if their loans are trustee securities, since the funds in the hands of trustees are of a substantial character and greatly enlarge the source of supply.

The securities authorised as trustee investments are set out in the Trustee Act, 1925, Part I. (o), and include the following loans of local authorities :

1. Consolidated stock created by the Metropolitan Board of Works or by the L.C.C., or debenture stock created by the Receiver for the Metropolitan Police District or stock of the Metropolitan Water Board.
2. Nominal or inscribed stock issued or to be issued under the authority of any Act of Parliament or Provisional Order by the corpn. of any municipal borough in the United Kingdom having, according to the returns of the last census prior to the date of investment, a population exceeding 50,000, or by a county council in the United Kingdom.
3. Any local bonds issued under the Housing (Additional Powers) Act, 1919, and mortgages of any fund or rate granted after the passing of that Act under the authority of any Act or Provisional Order by a local authority (including a county council) which is authorised to issue local bonds under that Act.

The provisions of the Trustee Act, 1925 (o), create a curious and anomalous position in certain towns. Stock issued by a municipal corpn. having a population of less than 50,000 at the last census is not entitled to rank as a trustee security, but housing bonds issued by the same authority are trustee securities. Similarly, mortgages issued by a local authority are trustee securities provided the authority has been authorised to issue local bonds under the Housing (Additional Powers) Act of 1919, and under sect. 87 of the Housing Act, 1925 (oo). [406]

Repayment of Loans. General.—No local authority is permitted in these days to raise irredeemable loans because the condition and status of an authority may vary to such a great extent over a period of years that such a practice might prove highly dangerous to the investing public. As illustrative of this it may be mentioned that important and flourishing towns in certain parts of the country have been adversely affected by post-war conditions to such an extent that they have experienced difficulties in meeting their commitments. Still more striking, perhaps, is the case of those small communities which exist in various parts of the country, and which were prosperous and important boroughs in bygone centuries.

A commercial concern is not affected in like manner. When the concern ceases to pay, steps are taken by the shareholders or others to reorganise or to liquidate the company. Consequently it is not

necessary for a company to arrange to repay its share capital over a period of years.

The important difference in regard to repayment of loans between a local authority and a commercial concern (or capital) makes the comparison of their financial affairs a matter of some difficulty, and consequently gives rise to misunderstandings, particularly with regard to the financial position and results of a trading undertaking managed and controlled by a local authority as compared with a similar concern operated by a company.

It is important to note the variations in meaning of the term "repayment" in relation to borrowing by a local authority. A stock issue is made at a certain date and the prospectus contains a statement that the issue will be redeemed on or before a specified date. Usually the authority has the option to redeem at par at a comparatively early date—possibly twenty years after the date of issue—but must repay the whole amount outstanding at some later date, usually some twenty years after the optional date.

Similarly, where loans are raised by means of mortgages, the deeds specify the date by which they will be repaid, although it may be possible by arrangement to effect a renewal of the loan for a further period. This, however, is in effect a fresh borrowing (see under "Loans not Requiring Sanction," *ante*, on p. 205).

Provisions of a like nature apply to all the forms in which a local authority can borrow money, and are described in detail under the heading "Forms of borrowing."

In this sense "repayment" refers to the contract between borrower and lender, but this contract has no necessary relation to the terms of the loan sanction. In former years it was often possible to exercise a sanction by a single loan for the full sanction period, the lender accepting repayment by instalments in conformity with the conditions of the sanction, and this practice led to the "earmarking" of loans. In such circumstances sanction and loan were absolutely correlated, but under modern conditions this is often not practicable. [407]

In the other sense the expression "repayment" refers to the condition in the loan sanction specifying the period within which the loan must be repaid. This condition is satisfied by the provision out of current revenue throughout the sanction period of such sums as will enable the loan to be repaid (see "Methods of Repayment," *post*, p. 210). Such provision ensures the fundamental object of borrowing, namely, the spreading of the expenditure, financed by means of the loan, over a number of rate periods, and would be more correctly described as the "redemption of loan expenditure." The compulsory provision out of current revenue for redemption of loans has no precise parallel in ordinary commercial accounts, a fact which sometimes gives rise to misleading comparisons, although provision for depreciation of wasting assets is to some extent equivalent. This explains the absence of the latter item in local authorities' accounts, which is sometimes commented upon unfavourably. It is in this sense of redemption that the term "repayment" is generally used.

Parliament has prescribed certain maximum periods for loan repayments (see *post*), and departments are permitted to sanction loans for such periods within the maximum period as they may consider proper. The subject of loan repayments was considered by a select committee in 1902 under the chairmanship of the late Sir Grant Lawson, then Mr. Grant Lawson, and the committee reported that they were generally

in favour of the maintenance of existing conditions. The principal amendments suggested by the committee were designed to secure uniformity as between the periods allowed for the repayment of loans for similar purposes by general Acts, and to ensure that the loan periods granted in private bills should coincide with the probable life of an asset as in the case of the periods allowed in the sanctions granted by Government departments. [408]

Periods for Repayment.—Sect. 198 of the L.G.A., 1933 (*p*), together with the Eighth Schedule (*q*) to the Act, gives the maximum periods which can be sanctioned for the repayment of loans. These periods are based upon the estimated life of the asset, but it is understood that the estimate errs on the safe side. The Minister, in sanctioning a loan, will not necessarily grant the maximum period, and it is invariably the aim to ensure that a loan will be fully repaid before the utility of the asset is gone. Discretionary powers with regard to the period for repayment do not remain solely with the sanctioning authority, since the local authority may apply for a period less than the maximum authorised by the statute; while again if a sanction has been given for a specific period of years, the local authority has discretion to repay the loan before the sanctioned period has expired if the contract with the lender enables them to do so.

The repayment of loans may be suspended for a period in certain circumstances, and it is provided by sect. 198 (2) of the L.G.A., 1933 (*p*), that where any sum is borrowed by a local authority for the purpose of meeting expenditure on the construction of new, or the extension or alteration of existing works forming part of an undertaking of a revenue-producing character, the annual repayments may be suspended for such period and subject to such conditions as the sanctioning authority may determine, not being longer than the period during which the expenditure remains unremunerative or for a period of five years whichever is the shorter.

By sect. 198 of the L.G.A., 1933 (*pp*), the periods allowed by various public general Acts, within which loans must be repaid, have been assimilated. Ordinarily the maximum period for the repayment of any such loan is to be 60 years, but the Eighth Schedule (*q*) to the Act contains a list of loans for the repayment of which a different maximum period is prescribed. These loans are as follows:

<i>Enactment.</i>	<i>Purpose for which money may be borrowed.</i>	<i>Maximum period for repayment of a loan.</i>
Tramways Act, 1870.	Generally for the purposes of the tramway undertaking.	30 years.
Allotments Acts, 1908 to 1931.	Acquisition of land for use as allotments.	80 years.
Small Holdings and Allotments Acts, 1908 to 1931.	Acquisition of land for use as small holdings.	80 years.
Housing Acts, 1925 and 1930.	All borrowings for the purposes of the Acts other than borrowings by a county council for the purpose of making grants or loans to, or subscribing to the capital of public utility societies.	80 years.
Housing (Rural Workers) Acts, 1926 and 1931.	Generally for the purposes of these Acts.	80 years.
Road Traffic Act, 1930.	For the purposes of Part V. of that Act.	Such period as the M. of T. may sanction.

[409]

As already stated, the basis which is adopted for the period sanctioned by a Government department for the repayment of a loan is the estimated working life of the asset, but regard is also paid to the possibility of the asset becoming obsolete through a change of outlook or an advance in public opinion. It should be noted that a fixed period is prescribed even when the subject of the loan is of such a permanent character as freehold land. [410]

Equation of Loan Periods.—In former years the equation of loan periods, by which is meant the ascertainment of a mean period for the repayment of a number of grouped loans, was frequently adopted in conjunction with a scheme for the consolidation of loans. The advantage sought was the consequent simplification of sinking fund provision, but there were certain difficulties in the application of this operation, and modern developments of the technique of loan finance have rendered the operation less frequently necessary. Where an equation of loan periods is still desired, authority can be obtained by means of a local Act, Provisional Order, or sanction of a Government department. [410A]

Date of Repayment.—When a loan is being repaid through the medium of a sinking fund some difficulty occasionally arises as to the date upon which the first instalment should be paid to the sinking fund. The capital asset in respect of which the provision is to be made may be acquired or constructed over a period of several months or possibly years, and may be financed in the first instance from revenue balance or from bank overdraft. (Temporary borrowing by bank overdraft is regarded as the raising of a loan for the purpose of regulating the date of repayment (see sect. 215 (2), L.G.A., 1933) (s). In such cases it is desirable to ascertain as far as possible the mean date of the expenditure, and for the first instalment to the sinking fund to be contributed within twelve months of this mean date. Where the capital construction extends over a very long period, e.g. more than twelve months, it is probably desirable to divide the loan into one or more parts so that one loan is created in respect of the expenditure in each financial year, and a mean date is ascertained in respect of expenditure during each of such financial years. This will entail several calculations for the repayment of the loans, but will have the advantage that each year will be charged with its appropriate proportion of capital repayments.

Where a loan is raised on the security of a mortgage, sect. 212 (2) of the L.G.A., 1933 (t), requires the first payment to the sinking fund to be made within twelve months of the date of borrowing, or where the loan is repayable by half-yearly instalments within six months of this date. An exception to this general rule may be made in the case of a big undertaking which is unlikely to prove of utility until the works are finally completed, and permission may be obtained in such cases from the sanctioning authority for the repayment to commence from the time when the asset is definitely in working order. Statutory authority for this course is contained in sect. 198 (2) of the L.G.A., 1933 (u) (see *ante*, p. 209). [411]

Methods of Repayment.—There exists a variety of methods by which loans can be repaid, and the method adopted will depend upon the circumstances of a particular authority. Usually a large authority will accumulate funds for the repayment of loans through the medium of a sinking fund, or in the case of a stock issue through the medium of a stock redemption fund, while in many cases a small authority will repay loans raised on mortgage direct to the lender by yearly or half-

(s) 26 Statutes 422.

(t) *Ibid.*, 420.(u) *Ibid.*, 414.

yearly instalments. These repayments by the small authority to the lender will be based on one of two methods which are termed respectively the instalment method and the annuity method. These methods represent the usual manner in which loans are repaid. An additional method by which loans are drawn for annually can be operated under the Local Loans Act, 1875, and is dealt with under the title LOCAL LOANS. [412]

The Instalment Method.—This consists of the repayment of the total loan by equal yearly or half-yearly instalments of principal calculated by dividing the number of years or half-years contained in the loan period into the amount of the principal involved, and interest is payable on the balance of the principal outstanding from time to time. Under this method the total payment each year for principal and interest together is a constantly diminishing amount. There are certain definite advantages attached to this method of repayment.

1. It is the cheapest form of borrowing by reason of the fact that interest costs at any given rate of interest are less than under any other system of repayment.
2. The book-keeping operations of the authority operating this form of repayment are simple.
3. It provides that the loan charges are heaviest when the cost of maintaining the asset is at its lowest, *i.e.* at the beginning of the period. This is particularly useful in connection with loans for such purposes as engines and motor vehicles.

The chief disadvantages attaching to this method are :

1. It is comparatively difficult to obtain lenders to advance money on these terms owing to the fact that the investment produces a constantly decreasing return. Usually a higher rate of interest is demanded for money to be repaid in this manner.
2. It creates a heavy burden on the earlier years which may prove a handicap to a revenue-producing concern if the income does not attain its maximum level in the early years.

The following represents an example of repayment of a loan by the instalment method and the interest payable thereon.

REPAYMENT OF LOAN BY EQUAL ANNUAL INSTALMENTS OF PRINCIPAL WITH
INTEREST ON THE BALANCE OUTSTANDING.

Loan of £1000 at 5 per cent. interest repayable in ten years.

Year.	Principal repaid.	Interest on outstanding loan.	Total loan charges.
	£ s. d.	£ s. d.	£ s. d.
1	100 0 0	50 0 0	150 0 0
2	100 0 0	45 0 0	145 0 0
3	100 0 0	40 0 0	140 0 0
4	100 0 0	35 0 0	135 0 0
5	100 0 0	30 0 0	130 0 0
6	100 0 0	25 0 0	125 0 0
7	100 0 0	20 0 0	120 0 0
8	100 0 0	15 0 0	115 0 0
9	100 0 0	10 0 0	110 0 0
10	100 0 0	5 0 0	105 0 0
	£1000 0 0	£275 0 0	£1275 0 0

The Annuity Method.—The annuity method of repayment of loans differs from the instalment system in that each equal instalment is in part composed of interest, and the amounts of principal and interest payable each year or each half-year remain constant throughout the period of the loan. In the earlier years of a long period loan, the yearly or half-yearly payment represents interest chiefly, but as the amount of interest falls so the amount of principal repaid increases until towards the end of the loan period the instalment represents chiefly the repayment of principal.

The annuity method is useful in the case of assets where the revenue is constantly increasing, as in the case of a trading undertaking, but where the cost of maintaining the asset is increasing with the passing of the years, the incidence of the loan charge becomes unfavourable as compared with the instalment method.

With regard to the borrowing of money subject to repayment by this method it will be found that lenders are more favourable to this method than to the instalment method, as they are assured of receiving an equal sum each year instead of a diminishing amount.

The following table shows the loan charges in connection with a loan raised upon the annuity method.

REPAYMENT OF LOAN BY EQUAL ANNUAL INSTALMENTS OF PRINCIPAL AND INTEREST COMBINED.

Loan of £1000 at 5 per cent. repayable in ten years.

Year.	Principal repaid.	Interest on outstanding loan.	Total loan charges.
	£ s. d.	£ s. d.	£ s. d.
1	79 10 1	50 0 0	129 10 1
2	83 9 7	46 0 6	129 10 1
3	87 13 1	41 17 0	129 10 1
4	92 0 9	37 9 4	129 10 1
5	96 12 9	32 17 4	129 10 1
6	101 9 5	28 0 8	129 10 1
7	106 10 10	22 19 3	129 10 1
8	111 17 5	17 12 8	129 10 1
9	117 9 4	12 0 9	129 10 1
10	123 6 9	6 3 4	129 10 1
	£1000 0 0	£295 0 10	£1295 0 10

Comparing this with the table given for loan charges under the instalment method, it will be seen that the cost is definitely greater, and in considering the adoption of either scheme for loan repayments this additional cost will necessarily be taken into account (vv). [414]

Sinking Funds.—The sinking fund for the repayment of loans has been evolved more recently and is now almost universal. Redemption by means of a sinking fund was allowed by the Metropolis Management Act, 1855 (vvv). The first sinking fund provisions of more general application framed on modern lines are contained in the P.H.A., 1875, sect. 234 (v), by which an equal amount is required to be set aside each year and to accumulate at compound interest at an agreed rate. Some years later, model sinking fund clauses were prepared

(vv) See generally Archer's Loan Tables (7th Edn.) for the repayment of loans by way of annuity and by sinking fund.

(vvv) 11 Statutes 889.

(v) 13 Statutes 723.

by the Local Government Board, the predecessors of the M. of H., and these clauses have been incorporated in a number of local Acts.

The repayment of loans by way of sinking funds is now regulated by sect. 213 of the L.G.A., 1933 (*w*), which provides that if a local authority determine to repay a mortgage loan by means of a sinking fund, the sinking fund must be formed and maintained by either :

- (a) Payment to the fund throughout the fixed period (*x*) of such equal annual sums as will be sufficient to pay off the whole of the loan within the period prescribed for repayment, or
- (b) Payment to the fund throughout the fixed period (*x*) of such equal annual amounts as with the accumulations at a rate not exceeding the prescribed rate or such higher rate as the M. of H. may approve, will be sufficient to pay off the total amount of the loan within the period prescribed for repayment.

A sinking fund formed under (a) above is termed a non-accumulating sinking fund, and one formed under (b) is an accumulating sinking fund.

Sums paid into a sinking fund, unless applied in repayment of moneys for the repayment of which the fund is formed, are required to be immediately invested in statutory securities. The operation of the accumulating sinking fund depends upon the regular and prompt investment of the annual contribution and of the interest on investments in such a way as to secure the accumulation of the fund at the prescribed rate. To avoid difficulty in this respect it is convenient, in practice, to carry interest on the investments of an accumulating sinking fund to the county fund, or general rate fund, as the case may be, and not direct to the sinking fund (*y*). The consequential loss to the sinking fund of this interest is made good by a direct contribution from the county fund or general rate fund to the sinking fund, in addition to the equal annual contribution, of an amount equal to the interest which should be paid into the fund based on the prescribed rate of accumulation. Sub-sect. (3) of sect. 213 of the L.G.A., 1933, gives legal effect to this course and thus enables the tax deducted from the interest on investments to be included in the general pool of the county or general rate fund, and to become available for the purposes of set-off. See title INCOME TAX.

The whole or any part of a sinking fund may at any time be applied in the discharge of the loan for which the sinking fund was formed. Where such discharge of debt is made out of the proceeds of an accumulating sinking fund, however, the local authority is required to pay into the fund each year, and accumulate during the residue of the fixed period, an amount equal to the interest which would have been produced if the amount had been invested at the rate per cent. on which the annual payments to the fund are based (*z*).

Where a sinking fund contains a surplus, possibly through the sale of investments at a price higher than the amount paid for them, the surplus is required to be applied to such capital purposes as the local authority, with the consent of the Minister of Health, may determine. [415]

Rate of Accumulation.—The rate of accumulation to be estimated for an accumulating sinking fund is a matter of considerable importance, for a small variation in the rate causes a considerable difference in the

(*w*) 26 Statutes 420.

(*x*) "Fixed period" means the period originally fixed as the period within which the moneys borrowed are to be repaid; see L.G.A., 1933, s. 213; *ibid.*, 424.

(*y*) L.G.A., 1933, s. 213 (3); *ibid.*, 420.

(*z*) *Ibid.*, s. 213 (4); *ibid.*, 421.

annual revenue contributions, particularly if the period for repayment is long. The following examples show the difference in the annual contributions required to repay a loan of £1,000 over a period of eighty years, the sinking fund accumulating at 3, 3½ and 4 per cent. respectively.

Rate of Accumulation.	Annual Contribution.
Per cent.	£ s. d.
3	3 2 3
3½	2 7 6
4	1 16 3

The rate of accumulation should not in general be the rate at which a local authority can borrow at the time, because in practice the rate of interest may fluctuate considerably during the period of the loan, and it is therefore desirable to calculate the rate on the basis of the probable average rate of interest during that period. The rate of accumulation should not be fixed too high, as, should the sinking fund prove deficient towards the later years, the revenue contributions must be increased to make up the deficiency, and a sinking fund calculated to accumulate at a high rate of interest will benefit the borrowing account in the earlier years at the expense of the later years.

The accumulation of sinking funds, if not applied in discharge of debt, must be invested in trustee securities, but in some cases may be utilised for the purpose of fresh borrowing (see *post*). One of the chief difficulties in determining the rate of accumulation of a sinking fund has been due to the fact that the interest on investments is liable to income tax, and that until recent years the local authority was without relief in respect of income tax so deducted. It was therefore necessary to fix a rate of interest for these accumulating funds which would cover the loss of income through the deduction of tax. [416]

The operation of sect. 79 of the P.H.A., 1925 (now re-enacted in the L.G.A., 1933, sect. 213 (3)) (a), to a great extent eliminated these difficulties. See title INCOME TAX.

The following table shows a sinking fund to repay a loan of £1,000 over a period of ten years, assuming a basic rate of accumulation of 3½ per cent.

Year.	Annual contribution.	Interest at 3½ per cent. to be added.	Total contribution to Sinking Fund.
	£ s. d.	£ s. d.	£ s. d.
1	85 4 10		85 4 10
2	85 4 10	2 19 8	88 4 6
3	85 4 10	6 1 5	91 6 3
4	85 4 10	9 5 4	94 10 2
5	85 4 10	12 11 6	97 16 4
6	85 4 10	15 19 11	101 4 9
7	85 4 10	19 10 11	104 15 9
8	85 4 10	23 4 2	108 9 0
9	85 4 10	27 0 1	112 4 11
10	85 4 10	30 18 8	116 3 6
	£852 8 4	£147 11 8	£1000 0 0

[417]

Adjustments of Sinking Fund.—If at any time it appears to the local authority that the amount of the sinking fund, together with the sums which will be payable into the fund, will not be sufficient to repay the

loan within the fixed period, the local authority is required to make increased payments to the fund, either temporarily or permanently, in order that the sinking fund shall be sufficient to redeem the debt within the period prescribed. Moreover, if the Minister of Health considers that the fund will be insufficient for its purpose, he may direct the local authority to make such additional contributions as he thinks are necessary, and the local authority is required by sect. 214 of the L.G.A., 1933 (b), to make such additional contributions.

On the other hand, should the sinking fund appear to be accumulating at a greater rate than is necessary for the purpose of the repayment of the debt, the local authority may, with the consent of the Minister, reduce their contributions either temporarily or permanently, provided that the Minister is satisfied that such reduced contributions will be sufficient for the purpose for which the fund was formed.

A local authority can take advantage of such reduction in the annual contributions during the remaining period of the loan if they so desire, but they have the alternative provided by sub-sect. (4) of sect. 213 (b) of continuing their contributions to the sinking fund in full, and of suspending payment to the fund, with the consent of the Minister, when the fund has accumulated to an amount sufficient to repay the debt. [418]

Redemption Funds.—This is a term applied to funds created for the purpose of repaying or redeeming stock raised by a local authority. A redemption fund is a sinking fund, but the redemption fund is subject to the provisions of the Stock Regulations and the Consent Order.

Stock redemption funds may be accumulating or non-accumulating, as is the case with sinking funds, and similar provisions apply to the investment of accumulations. Where, however, the accumulations of a redemption fund are used by a local authority for fresh capital purposes it is essential to obtain the approval of the Minister of Health in the form of a Consent Order (see “Utilisation of Redemption and Sinking Funds for New Capital Purposes,” *post*, p. 216).

The accumulations of the fund are frequently used for the redemption of stock by purchase before the date when the stock is compulsorily redeemable. This will happen in cases where stock can be purchased at a discount and it appears a desirable financial operation to take advantage of the low price of the stock. The purchase of stock at a discount will result in an excess in the fund, equal to the amount of the discount. In such cases it is not customary to take immediate advantage of this excess by reducing the contributions to the fund for the year in which the purchase is made, but to allow the fund to accumulate in the ordinary way and so relieve the contributions of the final years during which the fund is accumulated. Such a practice enables the fund to withstand losses which may be incurred during its life by the purchase of stock at a premium (see *infra*), depreciation upon the sale of investments, or in any other way.

It occasionally also happens that the authority finds it desirable to apply the fund in the purchase of stock before the due date for redemption at a price above par. In such cases the excess amount paid represented by the premium on the stock should be contributed direct to the redemption fund in order to comply with the Stock Regulations. Where, however, the amount purchased in any one year is considerable, local authorities frequently obtain the consent of the Minister of Health to spread the additional contributions over a period.

A separate redemption fund account is required to be kept in connection with the flotation expenses represented by the discount (if any) and expenses of issue. To comply with the Stock Regulations, 1921, the authority must contribute to this fund a sufficient annual sum to ensure the redemption of the expense by the date when the stock is *first* redeemable at par by the authority. [419]

Utilisation of Redemption and Sinking Funds for new Capital Purposes.—The disposal of the accumulations in redemption and sinking funds is a difficulty which local authorities have experienced ever since such funds were first created. The funds are set aside for the repayment of loans, but it is unusual for the authority to be able to utilise each year's contribution towards debt repayment forthwith, with the result that the funds accumulate in amount and must be invested or utilised in some manner. The chief difficulties in connection with the investment of these accumulations arise from :

1. The costs of investment.
2. The possible depreciation in the capital value of the investment.
3. The necessity of obtaining an adequate rate of interest.
4. The loss by income tax on dividends and interest.

The difficulties referred to in 1 and 3 are often overcome by the use of reciprocal loans, by which one local authority invests an amount representing the fund accumulations with another authority in return for the investment of a similar sum by the second authority with the originating authority. In such cases the costs are small, capital depreciation is avoided and the rate of interest is largely immaterial as the same amount will be both received and paid. There may be, however, difficulty in finding another authority possessing a similar amount available for investment at the same time.

The difficulty in regard to income tax was largely overcome by the operation of sect. 79 of the P.H.A., 1925 (c), which provided that all interest on investments of an accumulating sinking fund set up under the provisions of sub-sect. (4) of sect. 234 of the P.H.A., 1875, instead of being paid into the sinking fund should form part of the revenue of the fund or rate out of which the payments to this sinking fund were made. This entailed a transfer to the sinking fund of an amount equal to the proportion of principal due to the fund together with the interest as originally calculated on the fund's accumulations. By this means the tax deducted from the interest was made available as set-off against the liability of the authority for tax on loan interest. The L.G.A., 1933, repealed this section, but in sect. 213 (3) (d) re-enacted its provisions and extended them by making the conditions applicable to all sinking funds established for the repayment of mortgage loans.

Many local authorities, however, have removed these difficulties by obtaining a provision in a local Act authorising them to utilise sinking funds or redemption funds for fresh capital expenditure. In addition to solving the problem of the sinking fund accumulation, this course provides them with large capital sums without the trouble and expense of raising money in the open market.

The earliest precedent for this practice on the part of a public authority appears to be contained in sect. 5 of the Mersey Docks (Money) Act, 1859 (e), which empowered the Harbour Board to adopt the practice. Some years later, in 1881, the Metropolitan Board of Works, the predecessors of the L.C.C., applied to the Treasury for powers to utilise

(c) 13 Statutes 1152.

(d) 26 Statutes 420.

(e) 22 & 23 Vict. c. xx.

their sinking funds for the purpose of making advances to metropolitan boroughs. The Treasury approved this course and subsequently in 1885 the Board were authorised (*ee*) to utilise their funds for their own capital purposes. Towards the end of the last century a number of local authorities secured powers by local Acts to effect a similar purpose, and the practice has been rapidly growing during the present century. In addition, the application of stock redemption funds to new capital purposes was authorised by the Stock Regulations, 1901 (*f*). [420]

Many objections have been advanced to the use of sinking funds in this manner. It has been urged that :

1. It is a breach of contract with the investing public.
2. The credit of local authorities would suffer from its continuance.
3. The practice of constantly purchasing stock on the open market by repayment of loans enhances the credit of the authority, and conversely failure to do so results in the authority having to pay a higher rate of interest on future loans.
4. It tends to reckless finance as the authority is not subject to the same salutary check of public opinion as would be experienced were their demands more generally known.

The growth of opposition to the utilisation of sinking funds for new capital purposes resulted in the appointment in 1909 of a select committee to inquire and report as to the powers conferred on local authorities for utilising sinking funds for capital purposes and as to the expediency or otherwise of such powers being conferred. The committee reported in favour of the practice as is indicated by the following extracts from their summary of conclusions :

"76. The conclusions to which your committee have come may be summarised as follows :

- "1. The principle of utilising sinking funds (including loans funds and redemption funds) for purposes for which local authorities have borrowing powers, is, if properly safeguarded, financially unobjectionable, and the power of so using these funds is undoubtedly a great advantage inasmuch as it affords a convenient and economical method of exercising new borrowing powers."
- "6. With regard to sinking funds set aside in respect of loans raised on mortgage, the funds should not be used for borrowing powers where the mortgage earmarks a borrowing power under which the loan is raised ; and where a loan is by the mortgage charged on specified rates or revenues, the sinking fund should not be used for any borrowing powers under which the loan is required to be charged on different rates or revenues."
- "9. The terms of the prospectus should be strictly adhered to and reasonable information as to the contributions to and management of the sinking funds should be placed at the disposal of the ratepayers of the locality, and, where stock has been, or is proposed to be issued, of the Stock Exchange."

There is an important difference between the use of stock redemption funds and sinking funds applicable to mortgage loans. To utilise the accumulations of a stock redemption fund for new capital purposes, a local authority, other than a county council, must comply with the Stock Regulations, 1891 to 1932, which require the authority to obtain

(*ee*) See 48 & 49 Vict. c. 50, s. 16.

(*f*) S.R. & O. (Rev.), title "County Council, England," p. 29, and title "District Councils," p. 263 (Boroughs and Urban Districts).

a Consent Order from the Minister of Health, and must show the capital expenditure in respect of which sanctions have been received, and for which money is required. Under the earlier regulations, stock was required to be transferred at par from the old borrowing account to the new borrowing account, but the amending regulations of 1921 permitted the stock to be transferred at a price other than par, subject to the consent of the Minister. Where the transfer is made at a figure other than par, the price should approximate to the current market quotation for the stock.

A county council is not required to obtain the consent of the Minister for a transfer of stock, but must obtain approval of the price of the transfer if the price is other than par.

The object of making a transfer of stock at a price other than par is to ensure that the new borrowing account pays interest at the current market rate. A stock issued some years previously to the date upon which the redemption fund is to be utilised at a rate of interest greater or less than that operating at the time when the transfer is contemplated, will be quoted on the market at a premium or at a discount. If the transfer is made at par it would follow that the borrowing account would either be penalised or have an unfair advantage over other accounts of the authority.

With sinking funds established in connection with mortgage loans it is not necessary to obtain the consent of the Minister of Health to utilise accumulations for new capital purposes. The procedure is merely to transfer the money from the sinking fund to the borrowing account, at the same time crediting the sinking fund with the repayment of an amount of principal equal to the money borrowed.

There is no general statutory authority allowing a local authority to utilise sinking funds in this manner, but it is a common practice and no authority is required where there is no earmarking of loans. The power is inherent in a consolidated loans fund.

It would not, however, be regarded as sound financial practice for a local authority to utilise the whole of their sinking and redemption funds in this way. [421]

Capital Estimates.—The practice of preparing estimates of capital expenditure either separately or together with the ordinary revenue estimates, is steadily growing in favour. The rapid growth in the capital expenditure of local authorities in the years following the war, and the ever-increasing proportion of the total revenue expenditure of a local authority represented by loan charges, makes such consideration of future capital requirements an essential part of the budgetary process. It is not sufficient, however, merely to have regard to prospective capital expenditure for twelve months, since the expenditure of certain capital money may involve future expenditure for other purposes. Thus, the development of a housing estate may subsequently involve the erection of a new school. A longer view is necessary and in practice capital estimates are frequently prepared for a period of three or five years ahead. The limitations of such capital programmes must be recognised. The adoption of a programme cannot be made absolutely binding upon a future council, and indeed variation may be desirable. The programme should, however, enable a financial policy to be framed and indicate the priority to be observed in regard to different schemes, and, when adopted, this policy and these priorities should be broadly maintained even though there may be departures

from the programme in regard to particular details. In all capital estimates it is desirable to show the annual loan charges involved as the result of capital expenditure and also the income which will arise through the operation of the schemes. Similarly, it is helpful to show loan charges in respect of existing borrowings and to indicate the reductions in loan charges each year through the repayment or falling in of loans.

The Minister of Health considers that capital estimates are a vital feature in the financial administration of a local authority, and in his Annual Report for the year 1929-30, suggested that such estimates should be as systematic as for revenue expenditure. In the view of the Minister the authority should have a definite rule that schemes of capital expenditure, outside the approved programme, will not be adopted unless exceptional circumstances can be shown.

The Minister takes the view that when each year's capital budget is considered there should be considered at the same time the prospective capital expenditure for at least four years ahead, so that on each occasion there will be a survey of probable capital commitments over a period of at least five years. See the titles BUDGETARY CONTROL and CAPITAL EXPENDITURE OUT OF INCOME. [422]

Funded and Unfunded Debt.—One of the most important problems of a local authority in connection with its borrowings is the maintenance of a proper balance between their funded and unfunded debt. Funded debt may be described generally as long-term borrowings, although the term may be less than the full sanction period. Issues of stock and instalment and annuity loans raised for the full sanction period are within the definition. Unfunded debt consists of mortgages, bonds, money bills and other short-term loans which have to be renewed or replaced after a short period, possibly involving the authority in a higher rate of interest. In consequence the council must needs consider the probable trend of rates of interest in future years and how far it is safe for them to pile up unfunded or short-term debt. In many cases the authority finances all capital expenditure by means of short-term mortgages together with bank overdrafts, and then, when this has attained sufficiently large proportions, funds the whole, or the principal portion of it, by means of an issue of stock. In this connection it is desirable to note that a refund of 2s. per cent. of the duty on capital issues may be claimed in respect of the amount of the issue used for conversion.

It is impossible to dogmatise upon the proportion of funded to unfunded debt for any authority as this will depend to a large extent upon the availability of money to the authority, its probable future capital commitments, and what is still more important the future trend of the money market. A large proportion of unfunded debt would, however, be regarded as likely to injure the credit of a local authority. [423]

Capital Assets.—It is generally convenient, and technically correct, to describe expenditure by local authorities out of loans as "capital expenditure," but the distinction, which has previously been indicated (see *ante*, p. 199), between such expenditure and capital expenditure as the term is understood in commercial accounts must be borne in mind.

Capital expenditure is incurred by a business undertaking for the acquisition of assets which are, directly or indirectly, productive of profit; in the case of local authorities the question of profit either does not arise or, if it does, as in a trading undertaking, it is subsidiary to the idea of service. Loans are frequently raised by local authorities

for purposes entirely unremunerative, *e.g.* road improvements ; sometimes for purposes which are remunerative, *e.g.* electricity mains or plant. In either case expenditure properly attributable to the purpose need not necessarily be charged against the loan (see "Form of Sanction," *ante*, p. 204), nor need a loan be raised at all for such purposes (see title CAPITAL EXPENDITURE OUT OF INCOME).

The question of the treatment of such expenditure in the accounts of local authorities is one of, at least, academic importance.

The departmental committee on local authorities' accounts, reporting in 1907, recommended that a record should be kept of all capital assets having an abiding or realisable value, but that it was not necessary to preserve records of expenditure for purposes such as street improvements, paving or sewers, or for the promotion of bills in Parliament, or the payment of compensation.

Practice varies considerably in the treatment of capital assets in the accounts of local authorities. Thus, the cost of an ancient highway will not be found in the accounts of an authority as an asset, but the cost of the purchase of small strips of land for widening the same highway is often included. It would appear to be desirable to have some authoritative standard of treatment in order to secure uniformity in the accounts of local authorities. The Accounts (Boroughs and Metropolitan Boroughs) Regulations, 1930 (g), although only compulsory upon certain authorities and then only in regard to accounts which are subject to Government audit, may be utilised to provide such a standard.

The regulations do not limit local discretion as to the treatment of capital assets and would in fact permit the record of *all* expenditure out of loans upon properties and works as "deferred charges," the account being written down year by year to the extent of the provision made from revenue for the redemption of the expenditure. It is very generally agreed that such record would be inadequate.

Authorities may, however, record expenditure upon works and properties, whether out of loan or otherwise, in "capital asset" accounts (which are to be specified on the balance sheet), the provision made out of revenue, whether by original contribution or by way of annual redemption charges, being shown in a capital provision account. Where a capital asset is unrealisable, the capital provision in respect thereof is to be separately stated in the balance sheet.

Capital assets which are alienated or otherwise cease to be serviceable as such are required to be written off, and the capital provision in respect thereof correspondingly reduced. If any part of the cost of an asset so written off is still borne by loan, then such part must be shewn in the accounts as a deferred charge until the expenditure has been finally redeemed out of revenue. [424]

Loan Consolidation.—The complete consolidation of the loan debt of a local authority can be obtained by means of a consolidated loans fund, if this course has been authorised by a local Act. A less complete form of consolidation takes place when a local authority decides upon an issue of stock, one of the purposes of which is the repayment of previous stock approaching redemption period, together with a repayment of outstanding mortgage loans. These two forms still apply generally only to the larger authorities, but all authorities, both large and small, can adopt a system of pooling mortgages, the beneficial effects of which are great (see title MORTGAGES). [425]

Capital Fund.—The establishment of a capital fund is a feature of recent local Acts. Such a fund is built up of certain surplus moneys supplemented by direct rate contributions year by year, and the object of it is to purchase or acquire assets, without the necessity of applying for loan sanctions or overspending on revenue accounts.

The fund authorised by sect. 40 of the Liverpool Corpn. (General Powers) Act, 1930 (*h*), is called a capital reserve fund and forms a precedent that has been generally adopted. Sect. 40 is as follows :

“ 40.—(1) The corpn. may establish a fund, to be called ‘ the capital reserve fund,’ for the purpose of defraying any expenditure to which capital is properly applicable, to an amount not exceeding five thousand pounds in any one transaction, and such fund shall be formed by appropriating such sums out of the general rate fund as the corpn. from time to time deem expedient, and by paying into such first-mentioned fund any sums standing to the credit of any of the corpn.’s undertakings in any year after allowing for the payment of all expenses properly chargeable to revenue and interest and sinking fund payments in that year in respect of each such undertaking :

Provided that :

- (a) Any sum so appropriated to the capital reserve fund from the general rate fund (exclusive of any moneys derived from an undertaking of the corpn. from which revenue is derived, and of interest earned on or other income accruing to the capital reserve fund) shall not exceed in any year the equivalent of a rate of twopence in the pound calculated according to the rules made pursuant to sect. 9 of the R. & V.A., 1925 (*i*) ;
- (b) No sum shall be applied to the capital reserve fund from such undertaking of the corpn. except when the reserve fund of that undertaking shall have reached and is at the prescribed maximum (if any) and in any case the sums so applied shall be limited in any one year to an amount not exceeding one per centum of the capital expenditure of the undertaking as shown in the accounts at the end of the preceding year, together with the interest earned on the said reserve fund ;
- (c) The appropriations to and payment into the capital reserve fund shall cease to be made whenever the said fund amounts to the sum of two hundred and fifty thousand pounds ;
- (d) Nothing contained in this section shall be deemed to authorise the corpn. to apply or dispose of the surplus revenue of the electricity undertaking otherwise than in accordance with the provisions of sect. 43 (*j*) and of the Fifth Schedule to the Electricity (Supply) Act, 1926, and any contribution from the electricity undertaking to the capital fund shall be reckoned as a contribution in aid of the local rate for the purpose of the application of those provisions.

(2) (a) Pending the application of the capital reserve fund to the purposes authorised in the foregoing sub-section, the moneys in the fund shall be either invested in statutory securities or used in the manner provided by sect. 201 (use of moneys forming part of sinking and other funds) of the Act of 1927 (*jj*) ;

(*h*) 20 & 21 Geo. 5, c. cxii.

(*i*) 14 Statutes 627.

(*j*) 7 Statutes 817.

(*jj*) *I.e.*, The Liverpool Corpn. Act, 1927 (17 & 18 Geo. 5, c. lxxxviii.).

(b) Any income arising from the investment or use of the moneys in the capital reserve fund in the manner provided by the foregoing paragraph of this sub-section and any income arising from the application of the fund to the purposes authorised shall be carried to and form part of the general rate fund."

A special feature of the capital fund established by the city of Coventry is that it is intended to be accumulating, both as regards capital and interest. Any amounts advanced by the fund are to be in the nature of a loan to be repaid by the borrowing account to the capital fund, together with interest at the appropriate market rate. This will mean that the fund will steadily grow in amount until it becomes the financing account for all capital expenditure of the local authority.

In view of the special character of this fund, the section of the Coventry Corpn. Act, 1930 (*k*), by which the fund is authorised, is given *in extenso* below :

" 25.—(1) The corpn. may establish a fund to be called ' the capital fund,' to which they may pay any sums derived from the sale of corporate estate and any sums standing to the credit of any of the corpn.'s undertakings in any year (after allowing for the payment of all expenses properly chargeable to revenue and interest and sinking fund payments in that year in respect of each undertaking), and the balance of the general rate fund in hand at the close of any year and such other sums (including interest earned on the capital fund and any income arising from the application of the fund to the purposes authorised) as the corpn. may by resolution direct not being moneys directed by law to be applied to any other purpose :

Provided that—

- (a) No sum shall be applied to the capital fund from an undertaking of the corpn. from which revenue is derived, except when the reserve fund of the undertaking shall have reached and is at the prescribed maximum, if any, and in any case the sums so applied shall be limited in any one year to an amount not exceeding one per centum of the capital expenditure of the undertaking as shown in the accounts at the end of the preceding year, together with the interest earned on the said reserve fund ;
 - (b) Any sum directed by the corpn. to be paid to the capital fund from the general rate fund (exclusive of any moneys derived from any such undertaking and of interest earned on or other income accruing to the capital fund) shall not exceed in any year the equivalent of a rate of twopence in the pound calculated according to the rules made pursuant to sect. 9 of the R. & V.A., 1925 (*kk*) ; and
 - (c) Nothing contained in this section shall be deemed to authorise the corpn. to apply or dispose of the surplus revenue of the electricity undertaking otherwise than in accordance with the provisions of sect. 43 and the Fifth Schedule to the Electricity (Supply) Act, 1926 (*l*), and any contribution from the electricity undertaking to the capital fund shall be reckoned as a contribution in aid of the local rate for the purpose of the application of those provisions.
- (2) The corpn. may apply the moneys in the capital fund in the

exercise of any statutory borrowing power possessed by them or in providing money for payments into sinking funds in respect of loans raised under any such borrowing power (but not in making the annual payment required to be made thereto) or in the purchase or acquisition or taking on lease of any lands or buildings which they are authorised to purchase or acquire or take on lease under sect. 10 (further powers for acquisition of land) of the Act of 1920 (*ll*).

(3) (a) Pending the application of the capital fund to the purposes authorised in the foregoing sub-section, the moneys in the fund shall be either invested in statutory securities or used in the manner provided by sect. 130 (use of moneys forming part of sinking and other funds) of the Act of 1927 (*m*).

(b) Any income arising from the investment or use of the moneys in the capital fund in the manner provided by the foregoing paragraph of this sub-section, and any income arising from the application of the fund to the purposes authorised shall be carried to and form part of the general rate fund.

(4) All moneys derived from the sale of corporate estate which are applied from the capital fund under the provisions of this section shall be repaid from the account to which such moneys were advanced by such annual instalments with or without interest and within such period as may be determined by the corpn. Provided that where the advance is in the exercise of a statutory borrowing power, such period shall not exceed the period prescribed for the repayment of moneys borrowed under that power."

It is worthy of note that the direct rate contribution to the capital fund in both the above cases has been limited to an amount not exceeding twopence in the pound. Having regard to the incidence of existing loan charges, some such limitation is desirable. [426]

LONDON

The powers of the London local authorities to borrow are derived from general Acts of Parliament, mainly the Metropolis Management Act, 1855, the L.G.A., 1888, the Housing Acts and other Statutes, and in the case of the L.C.C. and the City Corpn. from sundry local Acts also. (The borrowing provisions of the L.G.A., 1933, do not apply to London by sect. 308 thereof (*mm*).)

As regards the L.C.C. the mode of borrowing is prescribed in a series of Money Acts commencing with the Metropolitan Board of Works (Loans) Act, 1869 (*n*). This Act authorised the Board to issue stock which has been the principal means of borrowing since that date. Prior thereto the Board raised money for capital purposes by mortgage loans. The Act was added to and modified by subsequent Money Acts which were incorporated in 1912, so far as they were then applicable, in the L.C.C. (Finance Consolidation) Act, 1912 (*nn*), which consolidated all earlier Acts with respect to the raising of money to the council on capital account. Powers are also granted to the council by the Act to raise money by the creation of terminable annuities and, temporarily, by the issue of London County Bills. The subsequent annual Money Acts do not technically confer power to borrow, but to expend on capital account the moneys which may be borrowed under the powers conferred by the Act of 1912. [426A]

(*ll*) *I.e.*, The Coventry Corpn. Act, 1920 (10 & 11 Geo. 5, c. lxxxviii.).

(*m*) *I.e.*, The Coventry Corpn. Act, 1927 (17 & 18 Geo. 5, c. xc.).

(*mm*) 26 Statutes 470. (*n*) 32 & 33 Vict. c. 102. (*nn*) 2 & 3 Geo. 5, c. cv.

City Corporation.—The Corpn. of the City of London have obtained powers by local Acts of Parliament from time to time to raise loans for various purposes, such as markets, improvements, bridges and dwellings, and have raised such loans either under the power at Common Law mentioned on p. 205, *ante*, or under the powers contained in their own Acts and the Local Loans Act, 1875 (*o*). [427]

Metropolitan Borough Councils.—The borrowing powers of these authorities for general services are contained in sect. 183 of the Metropolitan Management Act, 1855 (*oo*), which authorised every district board and vestry, for the purpose of defraying any expenses incurred or to be incurred by them in the execution of the Act (*p*), to borrow by way of mortgage of the rates, subject to the previous sanction in writing of the Metropolitan Board of Works.

It is from this Act that the L.C.C., as successors to the Metropolitan Board of Works, derives its powers of sanctioning the borrowing of money by metropolitan borough councils, who were constituted as the successors to the former vestries and district boards under the London Government Act, 1899 (*q*). Sect. 4 (1) of that Act introduced a change in the position in providing that if the L.C.C. refuses sanction, or does not within six months after application made give sanction or attaches conditions to the sanction, an appeal can be made to the Minister of Health, whose decision is final.

The Act of 1855, however, does not govern the borrowing of the metropolitan borough councils for all purposes, as loans are also raised by these bodies under the Public Libraries and Museums Acts, Baths and Washhouses Acts, etc., and for certain public health and other services under the sanction of the M. of H. For electricity supply purposes under the Electricity (Supply) Act, 1919, the sanctioning authority is now the Electricity Commissioners instead of, as formerly, the L.C.C. Full details are given in the note appended (see *post*, p. 226).

The L.C.C. obtains powers in its annual Money Acts to lend money to the metropolitan borough councils, and the bulk of the loans of the borough councils have been advanced by the council although those authorities are not restricted as to the source of borrowing when they have obtained the requisite sanction.

On the other hand, the L.C.C. is not required to make these loans, but it has been its invariable practice to entertain applications for advances which have been duly sanctioned. The rate of interest charged by the L.C.C. is within its discretion and the rate is fixed from time to time, having regard to the financial conditions prevailing, at such a rate as it is considered will not involve the council in any loss on the transaction.

The periods allowed by the L.C.C. for the repayment of loans by the metropolitan borough councils are in some cases governed by statutory enactment, in others by practice. Generally speaking, the maximum periods are 60 years for land and 30 years for other purposes, but in the case of housing 80 years is allowed for the land and 60 years is the maximum period for the buildings. Within these maximum terms the L.C.C., as sanctioning authority, has a discretion to sanction what terms it sees fit, subject to the right of appeal to the M. of H. above referred to. [428]

(*o*) 12 Statutes 242.

(*p*) *Ibid.*, 1227.

(*oo*) 11 Statutes 929.

(*q*) *Ibid.*, 1225.

Metropolitan Water Board.—The Board was established by the Metropolitan Water Act, 1902 (*r*), which Act gave the Board power to issue stock in connection with the purchase of the Metropolitan Water Companies, in pursuance of regulations to be made under the Act, which were duly made by the Local Government Board, and are known as “The Metropolitan Water Stock Regulations, 1903” (*s*), subsequently amended by the “Metropolitan Water Stock Regulations (Amendment), 1914” (*t*). These regulations prescribe the class of stock which the Water Board may issue and indicate the conditions governing such stock in the same way as the County Stock Regulations of the M. of H. The maximum period of repayment prescribed by the Act of 1902 for money borrowed for the purchase of the companies for paying off any debenture stock or mortgage debt is 100 years from 1903, and if borrowed for any other purpose the maximum period is 60 years.

Under the Metropolitan Water Board Act, 1906 (*u*), the Board obtained power to borrow by way of mortgage, and the same Act authorised the Board to borrow by way of Money Bills, to be called “Metropolitan Water Board Bills,” of which not more than £1,000,000 may be outstanding at any one time; these bills may not be issued for a period less than three nor more than twelve months from the date of the bill. [429]

Note as to the Borrowing Powers of L.C.C.

METHOD OF BORROWING.	ACTS AUTHORISING.
Consolidated Stock	} L.C.C. (Finance Consolidation) Act, 1912 (a).
London County Bills	
Terminable Annuities	
* Temporary Loans (not exceeding 6 months)	} L.C.C. (Money) Act, 1914 (b).
Mortgage of rates - - - -	
* Bearer bonds (within or without the United Kingdom)	} Public Authorities and Bodies (Loans) Act, 1916 (c), and Housing (Additional Powers) Act, 1919 (d).
† Local Bonds for Housing - -	
	Housing Act, 1925 (e), and regulations made by M. of H. thereunder.
	* Consent of H.M. Treasury required.
	† Consent of M. of H. required.

Note as to the Borrowing Powers of Metropolitan Borough Councils.

Metropolitan borough councils have power to borrow money with the consent of the L.C.C. for :

PURPOSE.	ACTS AUTHORISING.
Street improvements	} The Metropolis Management Acts.
Paving works	
Street lighting purposes	
Watering streets	
Provision of depots	
Sewerage and drainage	

(*r*) 20 Statutes 254.

(*s*) S.R. & O., 1903, No. 673.

(*t*) S.R. & O., 1914, No. 1271.

(*u*) 6 Edw. 7, c. lxxxvii.

(*a*) 2 & 3 Geo. 5, c. cv.

(*b*) 4 & 5 Geo. 5, c. clxxii.

(*c*) 10 Statutes 858.

(*d*) 13 Statutes 970.

(*e*) *Ibid.*, 1001.

Metropolitan borough councils have power to borrow money with the *consent of the L.C.C.* for :

PURPOSE.	ACTS AUTHORISING.
Provision of municipal buildings -	The Metropolis Management Acts as amended by L.C.C. (General Powers) Act, 1893 (<i>f</i>), and the Metropolitan Boroughs (Offices) Scheme, 1901 (<i>g</i>).
Housing purposes - - - -	Housing Acts, 1919 to 1930.
Open spaces - - - -	Open Spaces Act, 1906.
Advances under the Small Dwellings Acquisition Acts	Small Dwellings Acquisition Acts, 1899 to 1923 (<i>h</i>).
Collection, removal and disposal of house and street refuse and provision of wharves, destructors, etc.	P.H. (London) Act, 1891, Amendment Act, 1893 (<i>i</i>).
Hospitals, mortuaries - - -	P.H. (London) Act, 1891 (<i>k</i>).

Metropolitan borough councils can also borrow with the *consent of the Minister of Health* for :

PURPOSE.	ACTS AUTHORISING.
Sanitary conveniences, etc.	The P.H. (London) Act, 1891, s. 105 (2) (<i>l</i>).
Provision of premises, apparatus, etc., for disinfection, destruction and removal of infected articles, and Buildings for post-mortem examinations and accommodation for holding of inquests	
Maternity and Child Welfare purposes	
Provision of baths and washhouses -	
Provision of public libraries - -	The P.H. (London) Act, 1891 (<i>l</i>), and the Maternity and Child Welfare Act, 1918 (<i>m</i>).
Provision of burial grounds - -	The Baths and Washhouses Acts, 1846 to 1896 (<i>n</i>).
	The Public Libraries Acts, 1892 to 1919 (<i>o</i>).
	The Burial Acts, 1852 to 1906 (<i>p</i>).
And with the <i>consent of the Electricity Commissioners</i> :	
For the purposes of the Electricity Acts	Under the Electricity Supply Acts, 1882 to 1928 (<i>q</i>).

Borough councils also occasionally obtain powers in private Acts or in the Council's General Powers Acts authorising them to borrow money.

[430]

- | | |
|---|--|
| (<i>f</i>) 56 & 57 Vict. c. cexxi. | (<i>g</i>) S.R. & O., 1901, No. 663. |
| (<i>h</i>) 13 Statutes 881, 961, 981. | (<i>i</i>) 11 Statutes 1113. |
| (<i>k</i>) <i>Ibid.</i> , 1025. | (<i>m</i>) <i>Ibid.</i> , 742. |
| (<i>n</i>) 13 Statutes, title "Public Health." | (<i>o</i>) <i>Ibid.</i> |
| (<i>p</i>) 2 Statutes, title "Burial and Cremation." | |
| (<i>q</i>) 7 Statutes, title "Electric Lighting and Power." | |

BOUNDARIES, ALTERATION OF

See ALTERATION OF AREAS; COUNTY BOROUGH, CREATION OF;
COUNTY REVIEW.

BOUNDS, BEATING THE

See BEATING THE BOUNDS.

BOWLING GREENS

See GAMES, PROVISION FOR.

BREAD

	PAGE		PAGE
SALE OF BREAD BY WEIGHT	- 227	PROSECUTIONS	- 229
FANCY BREAD	- 228	OTHER STATUTES	- 230
SAFEGUARDS FOR BAKERS	- 228	LONDON	- 230
SCALES AND WEIGHTS IN SHOPS	- 229		

<i>For Adulteration of Bread</i>	-	-	<i>See title</i> ADULTERATION OF FOOD.
<i>Bakehouses</i>	-	-	" BAKEHOUSES.
<i>Administrative, Local Authorities'</i>			
<i>and General Requirements of</i>			
<i>Weights and Measures Acts</i>	-	"	FOOD AND DRUGS; WEIGHTS AND MEASURES.
<i>Unsound Bread</i>	-	-	" UNSOUND FOOD.

Sale of Bread by Weight.—The Sale of Food (Weights and Measures) Act, 1926 (*a*), which is to be enforced by Weights and Measures Authorities (*b*), includes provisions with regard to the weight and measure of articles of food generally (for which provisions, see the title WEIGHTS AND MEASURES); and, in addition, special requirements applicable to the sale of bread (*c*).

Bread, when sold by retail (*d*), must be sold by net weight, an exception being made in respect of fancy bread and loaves not exceeding 12 oz. in weight (*e*). Sale by net weight means two things. First, the weight of the bread must be a basis for the contract of sale (*f*); for example, a loaf may not be sold as a "large" loaf or a "twopenny" loaf without reference to its weight (*g*). Secondly, the weight of any wrapper or covering may not be included in the weight of the bread. The above requirements apply to bread, whether sold as whole loaves or not; and it seems clear that bread cut in slices and wrapped must be sold by net weight.

It is further provided that loaves sold, or in possession for sale or delivery, must be of the net weight of an integral number of pounds, exceptions being again made in the case of fancy bread and small loaves, and also in the case of consignments of at least 56 lb. for a single customer (*h*). Strictly it is contrary to the language of the statute to sell a loaf weighing slightly more than 1 lb. or 2 lb., but it is not customary to regard overweight as an offence, as the intention of the Act is clearly to protect purchasers against short weight, and it may be taken as certain that the courts would look with disfavour on a prosecution for

(*a*) 20 Statutes 419 *et seq.*

(*b*) The Weights and Measures Authorities are: in county boroughs the corpn.; in municipal boroughs, the corpn., if the borough had a population of 10,000 in 1878 and either had a separate quarter sessions in 1878; or (2) the corpn. subsequently resolved to administer the Weights and Measures Acts; or (3) the borough had appointed inspectors and possessed legal standards in 1878, and elsewhere the county council.

(*d*) S. 14; 20 Statutes 426.

(*c*) S. 6; 20 Statutes 421.

(*e*) S. 6 (3); 20 Statutes 421.

(*f*) *Lyons & Co., Ltd. v. Houghton*, [1915] 1 K. B. 489; 25 Digest 119, 412.

(*g*) *London County Council v. Read*, [1900] 1 Q. B. 288; 25 Digest 117, 398.

(*h*) S. 6 (2); 20 Statutes 421.

overweight (*i*). Wholesale transactions, except sales of bread pre-packed in wrappers, are outside the scope of the Act (*j*), and a retailer is responsible for the loaves which he sells, even though he may have bought them from a baker or wholesale dealer, unless the bread is pre-packed, when he may avail himself of the defence of warranty (*k*). [431]

Fancy Bread.—Though as stated above, fancy bread is specifically exempted, the Act provides that “pan loaves, French loaves and loaves of a similar character” shall be sold by net weight and in loaves of a definite number of pounds (*l*). This gives rise to difficulty. For a fancy loaf is a loaf different in shape and appearance from loaves of household bread (*m*); yet French bread may evidently be made in loaves of fancy shape. In a recent case (*n*) the High Court held that magistrates who had found as a fact that a loaf was fancy bread should not also have found that it was a French loaf. It seems to follow that a French loaf must be distinguished from fancy bread and must not be considered to be a kind of fancy bread.

Under the provisions, now repealed, of old Acts (*o*) dealing with the sale of bread by weight, there were many decisions on the subject of fancy bread; but it is necessary to observe that the exception in those Acts was not (as now) in favour of “fancy bread,” but of “bread usually sold under the denomination of French or fancy bread.” Nevertheless, some of the decisions referred to still hold good, particularly those that support the proposition that fancy bread must be made in loaves of a distinctive shape and that a difference in quality only will not take a loaf out of the category of ordinary household bread (*p*). The ordinary purchaser should not be led to think that he is getting ordinary household bread (*q*) when fancy bread is sold to him. [432]

Safeguards for Bakers.—A baker is not to be convicted because a single loaf is slightly deficient, and regard must be had to the average weight of his other loaves (*r*). Proof that the short weight was caused by a *bona fide* mistake or accident or some similar cause beyond the defendant's control, in spite of due diligence, entitles a defendant to be acquitted (*s*). The negligence of an employee is not a cause beyond control (*t*), but a breakdown in the baking machinery may be (*u*). Loss of weight through unavoidable evaporation (in spite of proved due diligence) will exonerate a defendant summoned for delivering a short-weight loaf to a customer, but does not protect a baker summoned for having a short-weight loaf in his possession for sale. Evaporation of water after baking cannot be prevented, and a baker is not required

(*i*) See judgment of AVORY, J., in *A. Walkling, Ltd. v. Robinson* (1930), 99 L. J. (K. B.) 171; Digest (Supp.); also *Blackledge and Sons, Ltd. v. Bolshaw* (1908), 99 L. T. 60; 25 Digest 119, 410.

(*j*) S. 14; 20 Statutes 426.

(*k*) S. 12 (4); 20 Statutes 424.

(*l*) S. 6 (3); 20 Statutes 421.

(*m*) *Bailey v. Barsby*, [1909] 2 K. B. 610; 25 Digest 120, 427; and *Aerated Bread Co., Ltd. v. Gregg* (1873), L. R. 8 Q. B. 355; 25 Digest 120, 423.

(*n*) *Bell v. Watson* (1932), 96 J. P. (N.) 350.

(*o*) Stat. (1822), 3 Geo. 4, c. cvi, and (1836), 6 & 7 Will. 4, c. 37; 8 Statutes 851.

(*p*) *Bailey v. Barsby*, *supra*; and *V. V. Bread Co. v. Stubbs* (1896), 74 L. T. 704; 25 Digest 120, 428.

(*q*) *Per AVORY, J.*, in *Kirk v. A. B. Hemmings, Ltd.*, 1933 (unreported).

(*r*) S. 12 (1); 20 Statutes 424.

(*s*) S. 12 (2); 20 Statutes 424.

(*t*) *A. Walkling, Ltd. v. Robinson* (1930), 99 L. J. (K. B.) 171; Digest (Supp.).

(*u*) *Wolfenden v. Oliver* (1932), 147 L. T. 80; Digest (Supp.).

to prevent it; but he is required to use all due care to prevent a deficiency in weight—which evidently means that a loaf likely to be kept for some period before sale must be made overweight, so that it will still weigh at least an integral number of pounds when sold, in spite of intermediate loss of weight by drying.

The safeguards enumerated above apply only to proceedings in respect of an alleged deficiency in weight, and the question has arisen whether a prosecution for selling (or having in possession) a loaf not of an integral number of pounds is such a prosecution. In the first case on this point which reached the divisional court (*a*), two of the three judges took opposite views and Lord HEWART, C.J., refrained from giving a decision; but in a later case (*b*) the court appears to have agreed that a prosecution for an offence under sect. 6 (2) is a prosecution in respect of a deficiency of weight and that the safeguards in the first three sub-sections of sect. 12 are available.

In any prosecution under the Act, an employer or principal may lay an information against an assistant or some other person whom he charges with being the actual offender and with having committed the offence in question without the employer's consent or connivance (*c*). But this provision appears to be valueless to an employer summoned for having bread in his possession contrary to the Act. For it has been held that the possession of the bread remains with the employer, who remains, therefore, the person who has committed the offence in question (*a*). [433]

Scales and Weights in Shops.—Sellers of bread must provide and keep in some conspicuous part of their business premises a correct weighing instrument (*d*) with the appropriate weights (*e*), and are under an obligation to weigh bread in the presence of a purchaser at his request, and also to permit an inspector of weights and measures to weigh the bread. So, too, a person carrying bread for sale or delivery must permit an inspector to weigh the bread. Under enactments repealed by the Act of 1926, sellers of bread had to provide scales and weights for vehicles taking out bread for delivery, but no such requirement is now made; and there is the less reason for any such requirement in view of the fact that inspectors are now apparently expected to use their official scales and weights, whether in shops or elsewhere, if they wish to ascertain the weight of loaves with a view to instituting proceedings (*f*). [434]

Prosecutions.—Certain formalities must be observed when any prosecutions under the Act are undertaken. The most important of these are: (1) prosecutions must be instituted within twenty-eight days of the commission of the offence; (2) within seven days after the offence, notice thereof in writing must be served on the defendant or sent to him by registered post; (3) in the case of an alleged deficiency, the defendant must have a reasonable opportunity to check the weight of the bread about which complaint is made (*g*). A local authority, a police authority, or the Director of Public Prosecutions can alone prosecute (*g*). [435]

(*a*) *A. Walkling, Ltd. v. Robinson* (1930), 99 L. J. (K. B.) 171; Digest (Supp.).

(*b*) *Wolfenden v. Oliver* (1932), 147 L. T. 80; Digest (Supp.).

(*c*) S. 12 (5); 20 Statutes 424.

(*d*) S. 6 (4); 20 Statutes 421.

(*e*) Weights and Measures Act, 1889, s. 35; 20 Statutes 404.

(*f*) S. 10 (4); 20 Statutes 423.

(*g*) S. 12 (6) and (7); 20 Statutes 425.

Other Statutes.—A local Act of 1822 (*h*) and the Bread Act, 1836 (*i*), as amended by the Bread Acts Amendment Act, 1922 (*k*), to which reference has been made above, contain a number of provisions relating to the adulteration of bread and the baking and sale of bread on Sundays. The sections of those Acts which relate to the weight of bread are repealed by the Act of 1926; and the remaining provisions, which are virtually obsolete, impose no duties on local authorities. [436]

London.—The law as set out above applies equally to the Metropolis, the L.C.C., outside the city, administering the Sale of Food (Weights and Measures) Act, 1926, as being one of the Weights and Measures Acts, 1878 to 1926.

The local Act referred to above regulated the manufacture and sale of bread in the City of London and the liberties thereof and within the weekly bills of mortality and ten miles of the Royal Exchange. [437]

(*h*) Stat. (1822), 3 Geo. 4, c. cvi. (applying to London).

(*i*) 8 Statutes 856.

(*k*) *Ibid.*, 878.

BREAKING UP OF ROADS

	PAGE		PAGE
GENERAL - - - - -	230	BREAKING UP ROADS BY PRIVATE	
STATUTORY RIGHTS OF LOCAL		PERSONS - - - - -	238
AUTHORITIES - - - - -	232	INCIDENTAL OBLIGATIONS AND	
Sewers - - - - -	232	ALTERATION OF PIPES ON	
Water - - - - -	232	STREET IMPROVEMENTS -	238
Gas - - - - -	233	Lighting and Guarding the	
Tramways and Light Railways	233	Works - - - - -	238
Electricity - - - - -	234	Reinstatement - - - - -	239
Telegraphic Services - - -	234	Alteration of Water or Gas Pipes	
Frequent Breaking Up - - -	234	on Street Improvements -	240
STATUTORY UNDERTAKERS -	235	LONDON - - - - -	240
Gas and Water - - - - -	235		
Tramways and Light Railways	236		
Electricity - - - - -	237		

See also titles :

ELECTRICITY SUPPLY ;
GAS ;
HYDRAULIC POWER ;
LEVEL CROSSINGS ;
LONDON ROADS AND TRAFFIC ;

MISFEASANCE AND NONFEASANCE ;
POSTAL, TELEGRAPH AND TELEPHONE
SERVICES ;
TRAMWAYS ;

and Road and Sewer and Drain titles *passim* ; for a list of all road titles, see title
ROADS OR STREETS ; and for a list of Sewer and Drain titles, see title
SEWERS AND DRAINS.

General.—There is no common law right to break up a public highway for any purpose (*a*). The generality of this rule is subject to two exceptions, namely (1) where the highway has been dedicated subject to such a right as, for example, the right to plough up a footpath in due course of husbandry (*b*) ; and (2) where the exercise of the right is necessary to the enjoyment of the highway as a highway (*c*). [438]

(*a*) *R. v. Longton Gas Co., Ltd.* (1860), 2 E. & E. 651 ; 26 Digest 444, 1618.

(*b*) *Arnold v. Blaker* (1871), L. R. 6 Q. B. 433 ; 26 Digest 417, 1359.

(*c*) *St. Mary Newington, Vestry v. Jacobs* (1871), L. R. 7 Q. B. 47 ; 26 Digest 325, 587.

The public have a right of passage, and any interference with that right, unless authorised by statute, is an obstruction, and those responsible for it may be indicted for a nuisance. Although certain roads have been vested in highway authorities (d), legal decisions have limited the property of these authorities in streets to so much of the soil as is necessary for the control, maintenance and protection of the street as a highway. Ordinarily the soil lying below the road material is the property of the owner of the land abutting on the street, up to the middle line of the street. Thus it was decided that in London, the rights of the vestry were limited to "the surface, and with the surface such right below the surface as is essential to the maintenance, occupation and exclusive possession of the street, and the making and maintaining the street for the use of the public" (e), and again in a borough outside London, "the vesting of the street vests in the urban authority such property, and such property only as is necessary for the control, protection and maintenance of the street as a highway for public use" (f). This is called the "area of user" (g) and below that area the owner of the soil has the right to use it as he pleases so long as he does nothing inconsistent with the public right of free passage over the surface. He may, for instance, make a tunnel under it to connect premises on opposite sides, so long as it does not interfere with statutory rights (h). A railway company, authorised by statute to make a tunnel under a highway, must usually pay compensation to the owner of the soil (i). An owner, however, has no right to interfere with the surface of a public highway (k). Mines and minerals under the soil of a highway also belong to the owner of the soil (l), and he has the right to work them, but he must not damage the highway, or the cost of reinstating it may be recovered by action (m). [439]

In London, a metropolitan borough council have by statute (n) vested in them the subsoil of any road, sufficient to construct lavatories, but outside London this position only exists in a borough or district to which sect. 47 of the P.H.A. Amendment Act, 1907 (o), has been applied by an order of the M. of H., and where this section is not in force the consent of the owner must be obtained (p). [440]

(d) *E.g.*, outside London, streets being highways repairable by the inhabitants at large were vested in the councils of the boroughs or urban districts in which they were situated by P.H.A., 1875, s. 149; 13 Statutes 685; see also Metropolis Management Act, 1855, s. 96; 11 Statutes 907; L.G.A., 1929, ss. 29 to 32; 10 Statutes 903—908.

(e) *Rolls v. St. George the Martyr, Southwark, Vestry* (1880), 14 Ch. D. 785; 26 Digest 330, 627.

(f) *Tunbridge Wells Corp'n. v. Baird*, [1896] A. C. 434; 26 Digest 330, 618.

(g) *Finchley Electric Light Co. v. Finchley Urban Council*, [1903] 1 Ch. 437; 26 Digest 329, 608.

(h) *Cunliffe v. Whalley* (1851), 13 Beav. 411; 26 Digest 326, 592; and see also *Cattle v. Stockton Waterworks Co.* (1875), L. R. 10 Q. B. 453; 43 Digest 1096, 267, and *Reigate Corp'n. v. Surrey County Council*, [1928] Ch. 359; Digest (Supp.).

(i) *Ramsden v. Manchester, South Junction and Altrincham Rail. Co.* (1848), 1 Exch. 723; 26 Digest 326, 596.

(k) *A.-G. v. Ashby* (1908), 72 J. P. 449; 26 Digest 326, 590. The case was settled before the Court of Appeal. The decision cited in the Digest is that of the court of first instance and the reference to the report should be as given here.

(l) See Highways and Locomotives (Amendment) Act, 1878, s. 27; 9 Statutes 182.

(m) *A.-G. v. Conduit Colliery Co.*, [1895] 1 Q. B. 301; 26 Digest 331, 629.

(n) P.H. (London) Act, 1891, s. 44 (2); 11 Statutes 1053, as amended by the L.C.C. (General Powers) Act, 1933, s. 66; 26 Statutes 597.

(o) 13 Statutes 929.

(p) See *Tunbridge Wells Corp'n. v. Baird*, [1896] A. C. 434; 26 Digest 330, 618.

STATUTORY RIGHTS OF LOCAL AUTHORITIES.

Sewers.—Local authorities under the P.H.A., 1875, have special statutory powers in regard to breaking up streets for the purposes of laying sewers, and repairing and maintaining them, and these are dealt with fully under the title SEWERAGE AUTHORITIES. [441]

Water.—By sect. 54 of the P.H.A., 1875 (*g*), where a local authority supply water in their district, they have the same powers and are subject to the same restrictions for carrying water mains within or without their district as for carrying sewers. These powers are given by sect. 16 (*r*) of the Act, and consist of the right to carry a sewer through, across or under any road or highway, public bridge (not being a county bridge), road, lane, footway, square, court, alley or passage whether a thoroughfare or not, or under any cellar or vault under the pavement or carriageway of any street, or after giving reasonable notice in writing to the owner, through any land whatsoever within their district. The powers of a local authority to carry sewers outside their district are subject to the restrictions, and to the issue of notices, and the necessity of the sanction of the M. of H., if objection is made to the execution of the work, imposed by sects. 32, 33 (*s*) of the Act of 1875. These provisions are described in the title SEWERAGE AUTHORITIES. [442]

The route to be followed by a water main must be decided by the surveyor of the council (*t*). [443]

Compensation for any damage done is payable under sect. 308 of the P.H.A., 1875 (*u*).

A water main may be laid in a highway not repairable by the council, subject to the payment by them of compensation for damage under sect. 308 of the Act of 1875 (*a*).

As regards pipes for the delivery of water, sect. 57 of the P.H.A., 1875 (*b*), incorporates with that Act, for the purpose of enabling a local authority to supply water, the provisions of the Waterworks Clauses Act, 1847, with respect to the breaking up of streets for the purpose of laying pipes, where the authority have not the control of the street. In *Hill v. Wallasey Local Board* (*supra*), it was decided that these last words referred to an authority who had not the control of their streets in general, or in other words were not the highway authority. The sections so incorporated are sects. 28 to 34 of the Act of 1847 (*c*), and allow the council, after giving notice to the highway authority and under their superintendence to open and break up the soil and pavement of streets and bridges within the council's limits for the supply of water. These provisions are described more fully on pp. 235, 236, *post*. [444]

Sect. 29 of the Act prohibited pipes being laid in land not dedicated to public use, without the consent of the owners and occupiers, except where a new pipe was substituted for an old one lawfully laid or for the repair or alteration of any such pipe. But by sect. 80 of the P.H.A., 1925 (*d*), this provision of the Waterworks Clauses Act, 1847, is no longer

(*g*) 13 Statutes 649.

(*r*) *Ibid.*, 633.

(*s*) *Ibid.*, 639 (as amended by s. 78 of the P.H.A., 1925; see also s. 78 (4) of that Act at p. 1151 of same volume).

(*t*) *Lewis v. Weston-super-Mare Local Board* (1888), 40 Ch. D. 55; 43 Digest 1061, 30.

(*u*) 13 Statutes 755.

(*a*) *Hill v. Wallasey Local Board*, [1894] 1 Ch. 133; 43 Digest 1062, 34.

(*b*) 13 Statutes 649.

(*c*) 20 Statutes 196—198.

(*d*) 13 Statutes 1152.

to be incorporated in the P.H.A., 1875, where the local authority are authorised to supply water and the authority may, on the application of the owner or occupier of any premises within their limits of supply abutting on any street laid out but not dedicated to public use, supply those premises with water and lay down, maintain and repair pipes in that street (*e*). These powers do not extend to any street belonging to a railway, canal or dock or harbour company except with the consent of the company, but this cannot be unreasonably withheld, and the M. of H. may decide whether a consent has been so withheld.

As to the laying of communication pipes for the supply of water, see *post*, pp. 236, 238. [445]

Gas.—Under sect. 161 of the P.H.A., 1875 (*f*), a borough or urban district council may be invested with power to supply gas within such part of their borough or district as is not supplied by a company or persons under statutory powers. The council usually obtain from the Board of Trade a provisional order, or a special order under sect. 10 of the Gas Regulation Act, 1920 (*g*), and they then become undertakers with a right of breaking up streets. The precise extent of these rights would depend on the terms of the order, but it is probable that sects. 6 to 12 of the Gasworks Clauses Act, 1847 (*h*), would be incorporated with the order. These sections closely resemble sects. 28 to 34 of the Waterworks Clauses Act, 1847, referred to on p. 232, *ante*, but contemplate that in the laying of pipes, streets should be broken up by the authority supplying gas, and not by individual owners or occupiers as in the case of water pipes (see *post*, pp. 236, 238).

Sect. 7 of the Gasworks Clauses Act, 1847 (*i*), prevented pipes being laid in land not dedicated to public use without the consent of the owners and occupiers, except where a new pipe was substituted for an old one lawfully laid or for the repair or alteration of any such pipe. But this provision has now been excluded from incorporation with any Act relating to the supply of gas by a local authority under the P.H.A. by sect. 80 of the P.H.A., 1925 (*k*). This section extends to the supply by a local authority of gas as well as water, and is summarised *supra*. [446]

Tramways and Light Railways.—The council of a borough or urban district or a parish council may be authorised to establish a tramway undertaking. Under sect. 4 of the Tramways Act, 1870 (*l*), they may obtain a provisional order authorising the construction of the tramway, but if they are not themselves the highway authority they must obtain the consent of that authority where power is sought to break up a road. The Minister of Transport may in certain cases, set out in sect. 5 of the Act, dispense with the need for consent. Under the order they will have power to break up streets in the same way as other promoters described on p. 236, *post*. [447]

Tramways are also constructed under the Light Railways Acts, 1896 and 1912 (*m*), by an order of the Minister of Transport made under those Acts, as amended by sect. 68 of the Railways Act, 1921 (*n*),

(*e*) The authority need not investigate the title of the applicant, but may assume that he has such rights of access to the alleged street as appears probable from a view of the premises (*Davies v. Ripon Corpn.*, [1928] Ch. 884; Digest (Supp.)).

(*f*) 13 Statutes 692.

(*g*) 8 Statutes 1287. See under title GAS.

(*h*) 8 Statutes 1217—1221.

(*k*) 18 Statutes 1152.

(*m*) 14 Statutes 252, 314.

(*i*) *Ibid.*, 1218.

(*l*) 20 Statutes 7.

(*n*) *Ibid.*, 362.

but at the present day very few new tramroads or light railways are authorised. Under sect. 3 of the Act of 1896 (*o*), an order authorising a light railway may be obtained by a county council, and also by a borough or district council. The Light Railways Acts contain no special provisions as to the breaking up of roads, and where a road is utilised for the light railway, the order would apply some code or contain special provisions governing the rights of the undertakers. [448]

Electricity.—A borough or district council may be authorised to supply electricity either by a provisional order made by the Board of Trade before 1920 under sect. 4 of the Electric Lighting Act, 1882 (*p*), or by a special order made after that year by the Electricity Commissioners and confirmed by the Minister of Transport under sect. 26 of the Electricity (Supply) Act, 1919, and approved by both Houses of Parliament (*q*).

Unless the order otherwise provides, the council will then be governed by the same restrictions on the breaking up of roads (described later) as other electricity undertakers. [449]

Telegraphic Services.—The Postmaster-General may not place telegraphs under streets without the consent of the authorities that have control of them. This was enacted as regards the Metropolitan Board of Works and towns of 30,000 inhabitants or upwards by sect. 9 of the Telegraph Act, 1863 (*r*), when the telegraphs were still in the hands of companies, and was extended to all boroughs and urban districts by sect. 3 of the Telegraph Act, 1892 (*s*). By sect. 10 of the Act of 1863 (*t*), the depth, course and position of works under a street or public road must be agreed upon between the Postmaster-General and the highway authority and also with any body who has control of the sewerage or drainage thereunder. By sects. 17 and 18 of the Act of 1863 (*u*), a notice of not less than 10 days must be given in the case of an underground work to the highway authority, and not less than 5 days' notice in the case of a work above ground. The work must be done under the superintendence of the authority, and the street must be properly restored. By sect. 20 traffic in a street or public road must not be stopped or impeded more than is absolutely necessary. The streets must be restored to as good a condition as they were before being broken up, and if the authority are not satisfied they may, under sect. 19, repair the road and charge the expenses to the Post Office Authorities. Where a difference arises between the Post Office and the highway authority it is referred, under sects. 3, 4 and 5 of the Telegraph Act of 1878 (*a*), to a stipendiary magistrate, if there is one in the district, or, if not, the county court judge, with an appeal to the Railway Commissioners.

Licensees of the Postmaster-General under sect. 5 of the Telegraph Act, 1869 (*b*), and sect. 5 of the Telegraph Act, 1892 (*c*), have no statutory power to break up streets. With regard to the settlement of differences generally between the Postmaster-General and local authorities, see under title POSTAL, TELEGRAPH AND TELEPHONE SERVICES. [450]

Frequent Breaking Up.—In order to avoid as far as possible the

(*o*) 14 Statutes 253.

(*g*) *Ibid.*, 772.

(*s*) *Ibid.*, 283.

(*u*) *Ibid.*, 226, 227.

(*b*) *Ibid.*, 252.

(*p*) 7 Statutes 688.

(*r*) 19 Statutes 223.

(*t*) *Ibid.*, 223.

(*a*) *Ibid.*, 262, 263.

(*c*) *Ibid.*, 284.

frequent breaking up of streets, a highway authority when about to repair or remake the surface of a street should give notice to all statutory bodies who have functions in the street, so that any repairs needed by them may be done at the same time. [451]

Some local Acts provide that if 3 months' notice is given by the council that street work involving the closing of a street, or part of a street, to vehicular traffic either absolutely, or to the extent of one-third or more of its width is to be undertaken by them, all statutory undertakers having statutory powers to break up that street shall be prohibited, for 12 months from the completion of the work, from breaking up the street or part so closed, without the council's consent (*d*). Emergency works and works on communication pipes or service lines are, however, excepted from this prohibition. [452]

STATUTORY UNDERTAKERS

Companies without parliamentary powers have no power to break up roads. Local authorities cannot grant this power (*e*) though they may on application give temporary permission to private persons, but if so an agreement should be made to reinstate to the satisfaction of the authority or for the authority to reinstate and charge the cost to the private owner. A company must therefore obtain the powers necessary by means of a local Act or order, and restrictions on the breaking up of streets would be imposed therein usually by the incorporation with the Act or order of a code in a Clauses Act. [453]

Gas and Water.—The codes in the Gasworks Clauses Act, 1847, sects. 6—9 (*f*), and the Waterworks Clauses Acts, 1847, sects. 28—34 (*g*), are similar and are as follows: The undertakers may open and break up the pavement of the streets and bridges within the limits of their Act and may open and break up any sewers, drains or tunnels within or under them, and lay down and/or place within the same limits pipes, conduits, service pipes and other works or engines, from time to time repair, alter or remove the same, and do any other acts necessary for the supply of gas or water, doing as little damage as possible and making compensation for damage done (*h*). It was held in *Schweder v. Worthing Gas Light and Coke Co.* (*i*), that tunnel in this connection meant something *ejusdem generis* with sewers and drains, and did not include a subway. Nothing may be done by the undertakers to break up land not dedicated to the public (*k*) without the consent of the occupier or owner, though they may break up in order to repair pipes already there (*l*). There have been many cases as to the liability of the highway

(*d*) See, e.g., s. 28 of the Maldens and Coombe U.D.C. Act, 1933 (23 & 24 Geo. 5, c. lxxxvii.).

(*e*) *Preston Corp'n. v. Fulwood Local Board* (1885), 53 L. T. 718; 26 Digest 440, 1573; *Normanton Gas Co. v. Pope and Pearson, Ltd.* (1883), 52 L. J. (Q. B.) 629; 26 Digest 327, 601.

(*f*) 8 Statutes 1217—1219.

(*g*) 20 Statutes 196—198.

(*h*) As to the words "doing as little damage as possible," see *R. v. East and West India Docks, etc., Rail. Co.* (1853), 2 E. & B. 466; 38 Digest 267, 92.

(*i*) No. 1, [1912] 1 Ch. 83 and No. 2, [1913] 1 Ch. 118; 25 Digest 473, 23; 472, 16.

(*k*) As to the meaning of "not dedicated to the public," see the *Schweder Case* above, and also *Redhill Gas Co. v. Reigate R.D.C.*, [1911] 2 K. B. 565; 25 Digest 473, 24; and *Davies v. Ripon Corp'n.*, *ante*, p. 233.

(*l*) Waterworks Clauses Act, 1847, s. 29; 20 Statutes 196; Gasworks Clauses Act, 1847, s. 7; 8 Statutes 1218; but see pp. 232, 233, *ante*, where water or gas is supplied by a local authority.

authority for damage done to underground mains by the use of steam rollers or other heavy apparatus (*m*). [454]

Before the undertakers open or break up the street, bridge, sewer, drain or tunnel they must give not less than 3 clear days' notice before beginning the work, to the authorities under whose control or management the same may be, except in cases of emergency, when the notice must be given as soon as possible. A plan showing the work to be done must be sent to the authorities and this must be approved by them; if there is a difference of opinion, the plan must be settled by two justices. Where the highway authority is not the same as the authority controlling the sewers or drains, the justices may require the undertakers to do such temporary work as is necessary for guarding against the interruption of the drainage. The work must then be carried on under the superintendence of the authority, and according to the plans approved by the authority or settled by justices, but if the authority fail to attend or refuse or neglect to superintend the operation, the undertakers may perform the work specified in the notice, and are not liable for the cost of such supervision. [455]

Sects. 44 to 47 of the Waterworks Clauses Act, 1847 (*n*), relate to communication pipes to be laid by the undertakers. (See *post*, p. 238, as to communication pipes laid by a private person.) The system authorised by these sections is that, on the request of the owner of any dwelling-house in a street in which pipes have been laid by the council, and upon the payment or tender of the water rate in advance, the council should lay down the service pipes and other works for supplying the house with water. The cost of the works is to be recovered by an annual rent fixed by agreement or in default of agreement by two justices. [456]

Tramways and Light Railways.—Power is given to promoters of tramways by sect. 26 of the Tramways Act, 1870 (*o*), to break up and open roads subject to certain restrictions. As in sect. 3 of the Act "road" is defined as "carriageway," the breaking up of footways is not authorised unless under special powers (*p*). Seven days' notice must be given of the commencement of the work to the highway authority, or the bridge authority if not the same, and to any railway or tramway company whose line is crossed on the level by the promoters' tramway. The work must be carried out under the superintendence and to the reasonable satisfaction of the road and other authorities, unless after the prescribed notice, superintendence is withheld. This superintendence is to be at the expense of the promoters. Subject to certain restrictions, tramway promoters, by sect. 30 of the Act of 1870 (*q*), in order to prevent frequent interruption of traffic, may alter the position of water or gas mains or telegraphic apparatus. They must obtain the consent of the persons to whom they belong, must replace them in a position satisfactory to their surveyor or engineer, and make full compensation for all loss or damage sustained. In case of a disagreement, there is an appeal to the Minister of Transport.

(*m*) *E.g.*, see *Gas Light and Coke Co. v. St. Mary Abbott's, Kensington, Vestry* (1885), 15 Q. B. D. 1; 26 Digest 432, 1508.

(*n*) 20 Statutes 201—203.

(*o*) *Ibid.*, 15.

(*p*) *Hyde Corp'n. v. Oldham Electric Tramway, Ltd.* (1900), 64 J. P. 596; 43 Digest 342, 23.

(*q*) 20 Statutes 17.

Sect. 31 (*r*) makes it necessary for promoters whose work will interfere in any way with the sewers or drainage of the area, to give 14 days' notice to the authorities, and comply with all reasonable directions and regulations of the authority as to the execution of the work. The right of local authorities and private owners of underground works to open the road on which a tramway is laid for their own purposes is reserved by sect. 32 (*s*) with certain restrictions in the interest of tramway promoters. It has been held (*t*) that it is not necessary to obtain the consent of a tramway company before breaking up a street in which a tramway is laid for the purposes of laying telephone wires. [457]

As respects light railways, the right of the undertakers to break up roads would be regulated by the order authorising the light railway. [458]

Electricity.—The provisions of sects. 6 to 12 of the Gasworks Clauses Act, 1847, were applied to the breaking up of streets for the laying of mains for electric lighting, by sect. 12 of the Electric Lighting Act, 1882 (*u*), but though this application has not been repealed, the rights of the undertakers are now governed by the provisions of the Electric Lighting (Clauses) Act, 1899, which are incorporated with electric lighting orders (*a*). Sect. 13 of the Act of 1882 (*b*), however, forbids undertakers to break up any street not repairable by a local authority without the consent of the body or person by whom the street is repairable, unless a special power is given by the order, or a written consent is obtained from the Electricity Commissioners, and a consent must not be given without due notice to the authority, person or company liable to repair, with an opportunity to state objections. By sects. 12, 14 and 15 of the Schedule to the Act of 1899 (*c*), one month's notice must be given by the electricity undertakers to the highway and bridge authorities, the Postmaster-General, and where the road is repairable by some one else than the highway authority, to the person, canal, railway or tramway or other company by whom it is repairable (*d*). The notice must describe the proposed work with a plan. If no objection is made the undertakers may execute the works, but it must be done to the satisfaction of the bodies to whom the notice was sent. In case of objection there is an appeal to the Electricity Commissioners, and the work may only be done on conditions approved by them, but in works on private streets the difference may be referred to arbitration. [459]

In all instances it is desirable to refer to the local Acts or orders governing the electricity undertaking to verify what provisions as to the breaking up of streets apply.

By sect. 16 (*e*) the authority liable to repair the street may give

(*r*) 20 Statutes 18. As to "notice," see *Brentford U.D.C. v. London United Tramways, Ltd.* (1901), 45 Sol. Jo. 408; 43 Digest 341, 18; and *Hastings Tramways Co. v. Hastings and St. Leonards Gas Co.*, [1906] 2 Ch. 578; 43 Digest 1072, 103.

(*s*) 20 Statutes 19.

(*t*) *Bristol Tramways Co. v. National Telephone Co.*, [1899] 2 Ch. 282; 43 Digest 346, 48.

(*u*) 7 Statutes 692; *cf.* clauses 1 and 2 of the Electricity (Supply) Bill now before Parliament.

(*a*) The incorporated sections of the Gasworks Clauses Act, 1847, are set out in the Appendix to the Electric Lighting (Clauses) Act, 1899 (7 Statutes 741).

(*b*) 7 Statutes 693.

(*c*) *Ibid.*, 712, 713, 714.

(*d*) The undertakers cannot break up a street not repairable by the local authority or any one else at all, even with the consent of the Electricity Commissioners (*Andrews v. Abertillery Urban Council*, [1911] 2 Ch. 398; 20 Digest 201, 19).

(*e*) 7 Statutes 716.

notice that they desire to execute the required work themselves, at the expense of the undertakers and in this case the undertakers must not do the work. Sect. 17 (f) gives the same powers as to the alterations of pipes and wires of other undertakers as sect. 30 of the Tramways Act, 1870. By sect. 22 of the Electricity (Supply) Act, 1919 (g), any authorised undertakers other than a local authority may place below ground any electric line intended for the supply of a particular consumer, and any distributing main required for such a supply, on giving 28 days' notice to the local authority and the owners and occupiers of premises affected. Action under this section might neutralise the effect of the decision in *Andrews v. Abertillery U.D.C.*, already mentioned (h). [460]

BREAKING UP ROADS BY PRIVATE PERSONS

No private person has any right to break up a road, except under sects. 48 and 49 of the Waterworks Clauses Act, 1847 (i), which give persons this right in order to obtain a water supply. These sections are incorporated with the P.H.A., 1875, by sect. 57 of that Act (k), for the purposes of the supply of water, and allow any owner or occupier of a dwelling-house to lay communication pipes from his house to the pipes of the undertakers, and to open the ground between the main and his premises after obtaining the consent of the owner and occupier of such ground and giving 14 days' notice to the water company or authority. If the pavement of any street exists between the house and the pipe of the water undertakers, by sect. 52 of the Act of 1847 (l), as much as is necessary may be broken up. As little damage as possible must be done, and compensation paid for any damage done. Any sewer or drain under the pavement may also be broken up. The owner or occupier must give notice and act under the supervision of the surveyor of the highway authority and reinstate the pavement in the same way as the water undertakers themselves must do, and they are subject to the same penalties for delay in reinstatement. This section only applies to a communication pipe and not to a service pipe, as the undertakers and not the private person are responsible for a service pipe (m). (As to the above powers relating to the connection of drains with sewers, see title SEWERAGE AUTHORITIES.) [461]

INCIDENTAL OBLIGATIONS AND ALTERATION OF PIPES ON STREET IMPROVEMENTS

Lighting and Guarding the Works.—Statutory undertakers and promoters have a statutory duty to light and guard any works in process of breaking up a highway, and special regulations are made under the London Traffic Act, 1924, as to the method of doing so. By sect. 10 of the Gasworks Clauses Act, 1847 (n), and sect. 32 of the Waterworks Clauses Act, 1847 (o), the undertakers must at all times cause the road and pavement broken up to be fenced and guarded, and must cause a light sufficient for the warning of passengers to be set up and kept alight every night until the work is completed. By sects. 11 and 33 of the same Acts if they neglect to do this, they forfeit to the authority having control of the street or bridge or sewer, drain or tunnel in respect of which they have made default, a sum not exceeding five

(f) 7 Statutes 717.

(h) See (d), *ante*, p. 237.

(k) 13 Statutes 649.

(m) *Chapman v. Fylde Waterworks Co.*, [1894] 2 Q. B. 599; 43 Digest 1085, 188.

(n) 8 Statutes 1220.

(g) *Ibid.*, 768.

(i) 20 Statutes 203.

(l) 20 Statutes 204.

(o) 20 Statutes 197.

pounds for each offence. A similar liability is thrown on tramway promoters by sect. 27 of the Tramways Act, 1870 (*p*), but there the initial penalty is one not exceeding twenty pounds, with a penalty of five pounds for each day during which the failure continues after the first day on which the penalty is incurred. Electric Light Companies have the same responsibilities as gas companies, because unless the Company's Act or order otherwise provides, sects. 10, 11 of the Gasworks Clauses Act, 1847, apply. See those sections as set out in the Appendix to the Electric Lighting (Clauses) Act, 1899 (*q*). [462]

Reinstatement.—The question as to how far statutory undertakers and promoters are liable to reinstate the roads they have broken up has caused much controversy. Where the undertakers are themselves the highway authority, of course no difficulty arises. But a difference may arise not only between a highway authority and a private company, but also between different local authorities and even different committees of the same authority. Under sect. 10 of the Gasworks Clauses Act, 1847 (*r*), sect. 32 of the Waterworks Clauses Act, 1847 (*s*), and sect. 10 of the Gasworks Clauses Act, 1847 (*supra*), which is incorporated with and set out in the Appendix to the Electric Lighting (Clauses) Act, 1899 (*t*), the undertakers must with all convenient speed complete the work for which the road was broken up and fill in the ground, and reinstate and make good the road or pavement or the sewer, drain or tunnel that has been opened up, and must carry away any rubbish. They must also keep the road or pavement in good repair for three months after replacement, and for such further time (if any), not being more than twelve months, as the soil broken up shall continue to subside. Sect. 27 of the Tramways Act, 1870 (*u*), differs from this. The promoters of a tramway must reinstate within four weeks unless the road authority consents otherwise in writing, and it is required that they should, to the satisfaction of the road authority, restore the surface to as good condition as that in which it was before it was opened up or broken up. They must also clear away all surplus material or rubbish occasioned by the work, and bear or pay all reasonable expenses of the repair of the road for six months after it is restored, as far as those expenses are increased by the opening or breaking up. The penalty recoverable is the same as that in regard to neglect of lighting and watching. By sect. 33 of the same Act any difference arising is to be settled by an engineer or other fit person nominated by the Minister of Transport. As regards water, gas and electricity, where there is delay or omission the road authority may cause the work to be executed at the expense of the undertakers (*a*). It was decided in *Schweder v. Worthing Gas Light and Coke Co.* (*b*), that the obligation is to reinstate the road to the condition in which it was before the work was undertaken by the gas company. The undertakers are also responsible for damages for any injury caused by negligence in their work (*c*). Questions as to nonfeasance and misfeasance generally are dealt with under the title MISFEASANCE AND NONFEASANCE. [463]

(*p*) 20 Statutes 16.

(*r*) 8 Statutes 1220.

(*t*) 7 Statutes 742.

(*a*) Gasworks Clauses Act, s. 12; 8 Statutes 1220; Waterworks Clauses Act, s. 34; 20 Statutes 198.

(*b*) [1912] 1 Ch. 83; 25 Digest 473, 23.

(*c*) *Weld v. Gas Light Co.* (1816), 1 Stark. 189; 25 Digest 482, 71; and *Goodson v. Sunbury Gas Consumers' Co., Ltd.* (1896), 75 L. T. 251; 25 Digest 483, 77; and see Cases on p. 124 of Pratt on Highways.

(*q*) 7 Statutes 742.

(*s*) 20 Statutes 197.

(*u*) 20 Statutes 16.

Alteration of Water or Gas Pipes on Street Improvements.—For the purpose of adapting water or gas pipes to the diversion or widening or altering the level of streets effected under the P.H.A., 1875, sect. 153 of that Act (*d*) allows the council of a borough or urban district to give a notice requiring the owner of water or gas pipes, mains, plugs or works to alter their situation. Sect. 153 further provides that the expenses are to be borne by the council, and if the notice is not complied with, the council may themselves make the alteration. The above-mentioned provision as to expenses is not, however, to apply where a local Act directs the expenses of any such alteration to be borne by the owner of the water or gas pipes or works, and his liability under the local Act is not to be affected.

Any public utility undertaking (*e*) sustaining damage by reason of the exercise by a county council in relation to a road vested in them by Part III. of the L.G.A., 1929, of functions which previously were exercisable in relation to the road by district councils under the P.H.A., 1875, are given a right to obtain compensation under sect. 308 of that Act (*f*), by sect. 39 of the L.G.A., 1929 (*g*). [464]

LONDON

As to London, see title LONDON ROADS AND TRAFFIC. [465]

(*d*) 13 Statutes 688.

(*e*) Defined in L.G.A., 1929, s. 39 (2) ; 10 Statutes 913 ; as meaning a company or authority which carries on a gas, water, hydraulic power, electricity, tramway, light railway or trolley vehicle undertaking.

(*f*) 13 Statutes 755.

(*g*) 10 Statutes 913.

BRIBERY

See CORRUPTION IN OFFICE.

BRIDGE TOLLS

See TOLLS AND STALLAGES.

BRIDGES

	PAGE		PAGE
PRELIMINARY - - -	241	STATUTORY OWNERS - - -	250
THE COUNTY BRIDGE - - -	244	BRIDGES ACT, 1929 - - -	252
PRESENT POSITION - - -	245	TOLL BRIDGES - - -	255
APPROACHES - - -	246	FOOTBRIDGES - - -	257
RATIONE TENURÆ - - -	247	PROTECTION OF AMENITIES - - -	257
AGREEMENTS - - -	248	NUISANCES ON BRIDGES - - -	258
THE MINISTRY OF TRANSPORT - - -	248	REMEDIES - - -	259
PROHIBITION AND RESTRICTION		LONDON - - -	259
OF USER - - -	249		

See also titles :

BILLS, PARLIAMENTARY AND PRIVATE ;	HIGHWAY AUTHORITIES ;
BREAKING UP OF ROADS ;	MINISTRY OF TRANSPORT ;
BRIDGES OVER STREETS ;	SEATS ;
FERRIES ;	UNREASONABLE AND EXCESSIVE USER ;

and Road titles *passim*. A list of these titles with a guide to their contents and interconnection will be found in the title ROADS OR STREETS.

Preliminary.—The passing of the L.G.A., 1929, simplified greatly both the law and the administration with regard to bridges, for it placed in the same hands—those of the county councils—not only the county bridges, but also bridges which up to that time had been under the control of the councils of boroughs and districts as highway authorities. At present, therefore, difficulties arise as to responsibility for repair more often between the highway authorities and private owners than between different local authorities, and many of the old decisions on cases are no longer necessary in explanation of the law. It is, however, necessary to have some knowledge of the earlier position in order to deal with certain points. The development of the common law and of the statute law governing bridges forms an interesting study.

A bridge differs from a highway in that it is a result of definite constructive action, while a highway may be merely a given piece of land over which the public have acquired rights by what are, in fact, though not in law, a series of unhindered trespasses. The bridge, therefore, forms a most important advantage to the public, for without it, except for ford or ferry, a highway is of little use. The making of bridges has therefore always been considered an important duty, and in Saxon times it was part of the *trinoda necessitas*, which every freeman had to perform. Later it was the work of religious brotherhoods, or *Fratres Pontii*, and this led to the building of chantries at the approach to the bridge or on the bridge itself, of which a few still remain. The early bridges were in most cases narrow and meant for foot-passengers or pack-horses. By the time of Magna Carta the feudal duty cast upon tenants or corporate towns of building bridges had become such a burden that it was enacted thereby (a) that no town or freeman shall be compelled to make bridges at river banks, except those who from of old were legally bound to do so. By common law, therefore, from that time the duty devolved on the public, and Sir EDWARD COKE said (b), “If a

(a) 1297 (15) ; 3 Statutes 25.

(b) 2 Inst., p. 700 (1797 Ed.).

man make a bridge for the common good of all the subjects, he is not bound to repair it, for no particular man is bound to reparation of bridges by the common law, but of *ratione tenure* or prescription." Much property has been left for the building or repair of bridges, and many old towns, specially the City of London, are fortunate in this respect. By sect. 117 (8) of the L.G.A., 1929 (c), it was enacted that where any person or authority receives any income applicable to the repair or maintenance of roads (defined in sect. 184 as including bridges which carry roads repairable by the inhabitants) in any parish or other area, they must pay over the net income to the rating authority of the county borough or district in which the bridge is situated, to be credited to the area. Even where a bridge was built by a private person for his own benefit, but the public constantly used it, it was held that the county was liable to repair it (d). Bridges built under a Turnpike Act before 1803 were held to be private but repairable by the county (e). Where, however, a man interfered with an existing public highway, for example, by cutting a ditch across, he was bound to compensate the public for the loss of convenience, and this was necessarily and properly done by making a bridge over the ditch. This bridge, when made, had to be kept in repair, *ratione nocumenti*, by the man who first constructed it and his successors in title (f), and this is still the law. [466]

The common law doctrine of repair was embodied in the Statute of Bridges of 1530, which by sect. 2 (g) declared that all bridges used by the public must be repaired by the county, unless the bridge was in any city or town corporate, when it was to be repaired by that city or town. After that date, a county could only avoid the liability to repair the bridge by proving that the liability to repair it rested on some other body or person than themselves (h). The liability of the counties grew so great during the next few centuries that the Bridges Act (i) was passed in 1803, which, by sect. 1 instituted county surveyors, by sect. 2 gave them power, where any bridge repaired at the expense of the county was narrow or inconvenient to have it widened, improved and made commodious, and to purchase land for the purpose, and by sect. 5 declared that no bridge erected after June 24, 1803, by any individual or body was to be deemed a county bridge unless it was erected in a substantial and commodious manner under the direction of or to the satisfaction of the county surveyor or a person appointed by the justices. The question as to how far actual adoption was necessary was discussed in *R. v. Southampton County Inhabitants* (j), and it was held that where a bridge was built by private owners and was not in an existing highway, the effect of the evidence as to dedication and adoption is a question for the jury, user and utility being elements for consideration, but that there need not be the proof of an overt act

(c) 10 Statutes 959. See *A.-G. v. Day*, [1900] 1 Ch. 31; 26 Digest 372, 980, and *Re Hall's Charity* (1911), 23 T. L. R. 32; 26 Digest 578, 2693.

(d) *R. v. Glamorgan Inhabitants* (1788), 2 East 356, n.; 26 Digest 575, 2667, and *Robbins v. Jones* (1863), 15 C. B. (N. S.) 221; 26 Digest 575, 2671.

(e) *R. v. West Riding of Yorkshire Inhabitants* (1802), 2 East 342; 26 Digest 575, 2666.

(f) *A.-G. and Doncaster R.D.C. v. West Riding of Yorkshire C.C.* (1903), 67 J. P. 173; 26 Digest 572, 2638.

(g) 9 Statutes 229.

(h) See *A.-G. and Doncaster R.D.C. v. West Riding of Yorkshire C.C.*, *supra*.

(i) 9 Statutes 255. S. 1 is in part repealed by L.G.A., 1933, and replaced by s. 104 of that Act; 26 Statutes 361.

(j) *R v. Southampton County Inhabitants* (1887), 19 Q. B. D. 590; 26 Digest 575, 2672

amounting to a formal dedication. This applied to Turnpike Trustee bridges built after 1803 (*k*). The Highway Act, 1835, placed highways in much the same position in regard to adoption, and instituted highway boards and highway surveyors. As regards bridges, by sect. 22 of that Act (*l*), surveyors of bridges were given further powers as regards the prevention of nuisances and obstruction and the means of obtaining materials for repair than in the 1803 Act, and by sect. 21 (*m*), a highway authority was to have the duty of repairing all highways leading up to, passing over and next adjoining a county bridge built after 1835, but the county was to repair the bridge itself, and the walls, banks or fences of the raised causeways and the raised approaches to any such bridge, or the land arches thereof.

By sect. 21 of the Highways and Locomotives (Amendment) Act, 1878 (*n*), a county authority was empowered to adopt a bridge erected before August 16, 1878, even if it had not been built under the superintendence of the surveyor as was necessitated by the Act of 1803, if it was in good repair and condition.

By sect. 144 of the P.H.A., 1875 (*o*) and by sect. 25 (1) of the L.G.A., 1894 (*p*), the urban and rural district councils became the highway authorities responsible for the repair of public bridges in their area, except county bridges which were excluded by the definition of "street" in sect. 4 of the Act of 1875. Sect. 147 of the Act of 1875, as extended to rural district councils by sect. 25 of the L.G.A., 1894, allowed the councils of boroughs and districts to agree with canal, railway or tramway proprietors to adopt and maintain any existing or projected bridge, viaduct or arch within their area, and to agree to pay any portion of the cost of the construction or alteration of any such bridge, viaduct or arch, or of the purchase of any adjoining lands for the purpose. Sect. 119 of the Municipal Corpns. Act, 1882 (*q*), provided that every bridge, wholly or in part in a borough, and which the borough and not the county was legally bound to maintain or repair, should be maintained, altered, widened, repaired or rebuilt under the sole management and control of the borough council, who were given all the powers of the justices of a county with respect to a county bridge, the expenses to be payable out of the borough fund. As to the effect of the L.G.A., 1929, see *post*, p. 245.

By sect. 6 of the L.G.A., 1888 (*r*), the county councils, in whom county bridges and the roads repairable with them were vested by sect. 3 (viii.) of that Act (*a*), were empowered to purchase or take over on terms to be agreed upon, then existing bridges which were not county bridges, and to erect new bridges, and to maintain, repair and improve any bridges so purchased or taken over or erected. By sect. 11 (1) of the Act (*b*), every road which was a main road, including any bridge carrying the road, if repairable by the highway authority, was to be wholly maintained and repaired by the council of the county in which the road was situate.

As respects county boroughs, by sect. 34 (2) of the L.G.A., 1888 (*c*),

(*k*) *R. v. Derby Inhabitants* (1832), 3 B. & Ad. 147; 26 Digest 574, 2657.

(*l*) 9 Statutes 59. See *R. v. Brecon Inhabitants* (1849), 15 Q. B. 813; 26 Digest 582, 2723.

(*m*) *Ibid.*, 58. See *R. v. Southampton County* (1886), 17 Q. B. D. 424; 26 Digest 586, 2766.

(*n*) *Ibid.*, 175.

(*p*) 10 Statutes 794.

(*r*) *Ibid.*, 691.

(*b*) *Ibid.*, 693.

(*o*) 13 Statutes 683.

(*q*) *Ibid.*, 613.

(*a*) *Ibid.*, 689.

(*c*) *Ibid.*, 712.

all such bridges and approaches and parts thereof, situate within a county borough, as were previously repairable by the county or any hundred therein, were transferred to the council of the county borough, and the cost of their repair was made payable from the borough fund.

Where the area of a city, which is itself a county of a city, is enlarged, the borough council is liable to repair any county bridge in the added area (*d*). The transfer of an isolated bit of a county to another transfers the liability to repair county bridges in the area (*e*), unless they are repairable by prescription or statute (*f*).

As to remedies for non-repair, see *post*, p. 259; and as to questions of misfeasance or nonfeasance, see title MISFEASANCE AND NONFEASANCE. [467]

The County Bridge.—It is necessary to discuss the meaning of the term county bridge, before examining the present position under the L.G.A., 1929. In 1870 (*g*), BOVILL, C.J., said, "County bridge is an expression not known to the law. It is merely a compendious way of speaking of a public bridge which the county is liable to repair." In 1810 it was held (*h*) that all public bridges were *prima facie* repairable by the inhabitants of a county without distinction of foot, horse or carriage bridge, but in what is called the *Tinker's Bridge Case* (*i*), Lord CAMPBELL said, "It can hardly be said that every structure which enables passengers to cross a stream is a county bridge." The question has arisen, too, as to the difference between a culvert and a bridge, for a culvert is part of a highway, and therefore sometimes repairable by a different body from the bridge. It was held in *R. v. Lancaster* (*k*) that this was a question of degree, and in *R. v. Whitney* (*l*) that as to whether the structure was a bridge or a culvert, being without parapets was not decisive, nor that it was built over water flowing in a channel between banks, though nothing could be a bridge which is not built over such a flow of water. In *R. v. Oxfordshire Inhabitants* (*m*), CAMPBELL, J., said, "The bridge must be proved to be over a watercourse to support the allegation that the inhabitants of the county are bound to repair it. The meadow which is covered by water in times of flood is not a watercourse." Where there was a bridge of forty-two arches, however, under five of which a river flowed constantly, it was held that the whole structure must be deemed to be a bridge repairable by the county, there being no general rule of law that arches under which there is not a constant running stream, cannot form part of a county bridge (*n*). A floating bridge, however, which consisted of a vessel propelled by steam from one side of a river to the other, and kept in its course by chains laid down across the bed of the stream, was held to be a ferry and not a bridge (*o*). The word "bridges" in sect. 67 of the Highway Act, 1835 (*p*), which empowers highway surveyors to clean and scour

(*d*) *R. v. Norwich* (1719), 1 Stra. 177; 26 Digest 582, 2721.

(*e*) *R. v. Brecon Inhabitants* (1849), 15 Q. B. 813; 26 Digest 582, 2723.

(*f*) *In re Staffs. and Derbyshire C.C.* (1890), 54 J. P. 566; 26 Digest 582, 2724.

(*g*) *R. v. Chart and Longbridge Inhabitants* (1870), L.R. 1 C. C. R. 237; 26 Digest 571, 2631.

(*h*) *R. v. Salop Inhabitants* (1810), 13 East 95; 26 Digest 572, 2633.

(*i*) *R. v. Southampton County Inhabitants* (1852), 18 Q. B. 841; 26 Digest 589, 2787.

(*k*) (1868), 32 J. P. 711; 26 Digest 573, 2653.

(*l*) (1835), 3 A. & E. 69; 26 Digest 573, 2650.

(*m*) (1830), 1 B. & Ad. 289; 26 Digest 572, 2645.

(*n*) *R. v. Derbyshire Inhabitants* (1842), 2 Q. B. 745; 26 Digest 573, 2647.

(*o*) *Ward v. Gray* (1865), 6 B. & S. 345; 24 Digest 969, 18.

(*p*) 9 Statutes 83.

ditches, drains or watercourses, and to make tunnels, plats or bridges where they think necessary on any land, would probably not be held to cover the erection of a county bridge. [468]

Present Position.—The position before the passing of the L.G.A., 1929, was therefore that, subject to the question of control and grants made by the Minister of Transport dealt with later :

- (i.) County borough councils had complete authority over bridges in their area except those liable to be repaired *ratione tenuræ* or by custom or prescription (*pp*), or belonging to some statutory body (*pp*), or toll-bridges or other privately owned bridges.
- (ii.) County councils were the authorities for " county " bridges in their area, *i.e.* bridges erected before 1803, or after 1803 under the supervision of the county surveyor and those taken over, including bridges on dis-turnpiked roads.
- (iii.) Non-county borough councils were themselves highway authorities under sect. 144 of the P.H.A., 1875 (*g*), and under sect. 119 of the Municipal Corpns. Act, 1882 (*gg*), for all non-county bridges in their area, but might also have the duty to repair *ratione tenuræ* or by custom or prescription.
- (iv.) Urban and rural district councils were the highway authorities, and so liable for the repair and upkeep of bridges in all highways repairable by the inhabitants at large except county bridges, or the bridges described in the exception in (i.), *supra*.

By sect. 134 of the L.G.A., 1929 (*r*), " county bridge " was defined as including " any bridge which a county council are liable to repair, except a bridge which they are liable to repair only by reason of the facts that the bridge is repairable by the inhabitants at large and that the road carried by the bridge is for the time being a county road." This draws attention to the point that with the passing over of highways to the counties as highway authorities, they are responsible now as to (i.) the " county " bridges they had before, and (ii.) the bridges on roads which they took over from the old highway authorities, the borough and district councils (*s*).

Under sect. 29 (4) of the L.G.A., 1929 (*t*), the county council became responsible for the maintenance, repair and improvement of every bridge in their area, repairable by the inhabitants, which carries a county road. In non-county boroughs, sect. 119 of the Municipal Corpns. Act, 1882, to which reference is made on p. 243, *ante*, is to cease to have effect as respects any bridge carrying a county road, and also sect. 35 (2) of the L.G.A., 1888 (*u*), which dealt with exempted expenses, so that the borough is no longer exempt from contributing its proportion of the costs of bridges. Although by sect. 32 of the 1929 Act (*v*), an urban district, which under the Act includes a non-county borough, with a population exceeding 20,000, may claim to maintain and repair county roads, by sub-sect. (6) (*a*) this right does

(*pp*) See *post*.

(*gg*) 10 Statutes 613.

(*s*) For a discussion as to the degree of repair in the case of a non-county bridge repairable by a former highway authority, see *A.-G. v. Hornsey B.C.*, [1927] 1 Ch. 331; Digest (Supp.).

(*t*) 10 Statutes 903.

(*v*) *Ibid.*, 906.

(*g*) 13 Statutes 683.

(*r*) *Ibid.*, 971.

(*u*) *Ibid.*, 714.

(*a*) *Ibid.*, 908.

not cover county bridges. By sect. 35 (1) (b), however, a county council may delegate to either a non-county borough council, an U.D.C. or a R.D.C., who have applied for delegation, the power of maintenance, repair and improvement of (i.) all unclassified roads, exclusive of county bridges; (ii.) all or any classified roads, exclusive of county bridges, or (iii.) all or any of the county bridges within the borough or district. The borough or district council are then, under sect. 36, responsible as the agents of the county council. Where, however, an urban area wishes to avoid the responsibility of a bridge on an unclassified road it may either by sect. 34 (c) make an agreement with the county council to maintain, repair or improve it for an agreed payment, or by sect. 37 (d) apply for the road to be made a county road. If the county objects, the applicants may appeal to the Minister of Transport, and he may hold an inquiry into the matter.

The present position is, therefore, apart from bridges wholly under the control of the Minister of Transport :

- (i.) County borough councils are responsible for all bridges in their areas except those repairable *ratione nocumenti* or *tenuræ*, or by custom or prescription or by statutory bodies, and toll bridges and other privately owned bridges.
- (ii.) County councils are responsible for all bridges in their areas, both those which are "county" bridges and those formerly repairable by the non-county borough, or district, council as highway authority, except bridges repairable *ratione tenuræ* or by prescription or custom, or by statutory bodies and those mentioned in (iii.), *infra*, but they may delegate the repair of their bridges to any such council.
- (iii.) Non-county boroughs and urban districts are responsible for the bridges on unclassified roads in their areas unless they are "county" bridges, but they may ask the county to maintain these for them, and boroughs may be responsible *ratione tenuræ*. [469]

Approaches.—The subject of the repair of the approaches to bridges was of more importance when the county and the highway authorities were different bodies. There are still difficulties, however, as regards the approaches to bridges owned by statutory bodies, or repairable *ratione tenuræ* or by custom or prescription. By sect. 7 of the Statute of Bridges, 1530 (e), it was enacted that the portion of the highways which adjoin the ends of bridges for a distance of 300 feet are to be repaired by those on whom lay the liability to repair the bridge, and in *R. v. West Riding of York Inhabitants* (f), Lord ELDON, L.C., said, "The county is by law bound *primâ facie* to repair the roads at the ends of every bridge, which bridge it is bound to repair; the statute has fixed the length at 300 feet," and it was decided in *R. v. Lincoln Corpn.* (g), that the same principle applied to bridges repairable *ratione tenuræ*. A county may thus be liable to repair 300 feet of a highway in another county (h). This liability was, however, altered as respects bridges built after August 31, 1835, and liable to be repaired by and at the expense of any county, or part of any county, by sect. 21

(b) 10 Statutes 910.

(d) *Ibid.*, 912.

(f) (1806), 7 East 588; 26 Digest 585, 2762.

(g) (1838), 8 A. & E. 65; 26 Digest 586, 2769.

(h) *R. v. Devon Inhabitants* (1811), 14 East 477; 26 Digest 585, 2763.

(c) *Ibid.*, 909.

(e) 9 Statutes 232.

of the Highway Act, 1835 (*i*). Under this section, all highways leading to, passing over, and next adjoining to the bridge, are to be repaired by the persons or body bound by law to repair them, before the erection of the bridge. In the case of *Hertfordshire C.C. v. New River Co.* (*j*), it was held that, subject of course to the wording of the private Act, so much as 300 feet need not be repaired if shorter approaches were sufficient for the use of the bridge.

By sect. 12 of the Annual Turnpike Acts Continuance Act, 1870 (*k*), it was provided that where a turnpike road became an ordinary highway, all bridges previously repaired by the trustees of the turnpike, should become county bridges and be kept in repair accordingly, subject to a proviso that such bridges should be treated as if they had been built subsequently to the passing of the Highway Act, 1835. It would seem that the proviso brings the road within sect. 21 of that Act, with the result that the necessity of repairing 300 feet approaches would not apply to the road, and this may be of importance where a river is the boundary between the counties and the road over it is one that became a county road when dis-turnpiked. [470]

Ratione Tenuræ.—Bridges may be repairable by a corp'n. by prescription or custom or *ratione tenuræ* and by an individual *ratione tenuræ*, following the feudal liability referred to in Magna Carta, the principles being the same with regard to liability as in the case of highways (see under title REPAIR OF ROADS). It is an ancient duty or obligation arising in association with the grant of lands or other servitude. These liabilities are specially saved in the various Highway Acts, and by sect. 38 of the L.G.A., 1929 (*l*), nothing in that Act is to affect the liability of persons liable to maintain and repair bridges not maintainable by the inhabitants at large, which would refer to bridges repairable *ratione tenuræ* as well as to those in private roads which have not been adopted. The corp'n. may be the council of some ancient borough or it may be some other incorporated body. Any such person or body may widen the bridge or alter it, but they cannot thereby discharge their liability to repair, unless the bridge so widened is in fact a new bridge, in which case the county became liable to repair (*m*), but in *R. v. West Riding of Yorkshire Inhabitants*, 1787 (*n*), it was held that where an ancient footbridge was enlarged to a carriage-bridge by a township liable to repair, the township still remained liable to contribute to the cost of repair to the extent of their previous liability as regards the footbridge. Where a road over a bridge repairable *ratione tenuræ* became a turnpike road, and the turnpike trustees built two new arches and repaired them along with the road, these arches, on the expiration of the turnpike trust, became repairable by the county, and the rest of the bridge remained repairable *ratione tenuræ* (*o*). Those liable to repair a bridge may be indicted for non-repair, or the highway authority may repair and summon them for the cost, under sect. 34 of the Highway Act, 1862 (*p*), or sect. 25 (2) of the L.G.A., 1894 (*q*), applied to county councils by sect. 30 (2) of and Sched.

(*i*) 9 Statutes 58.

(*j*) [1904] 2 Ch. 513; 26 Digest 585, 2765.

(*k*) 9 Statutes 282.

(*l*) 10 Statutes 913.

(*m*) *R. v. West Riding of Yorkshire Inhabitants* (1770), 5 Burr. 2594; 26 Digest 588, 2785; and *R. v. Surrey Inhabitants* (1810), 2 Camp. 455; 26 Digest 574, 2656.

(*n*) 2 East 353, n; 26 Digest 577, 2683.

(*o*) *R. v. Buckingham County* (1878), 43 J. P. 175; 26 Digest 574, 2659.

(*p*) 9 Statutes 134.

(*q*) 10 Statutes 794.

I. to the L.G.A., 1929 (*r*). By sect. 148 of the P.H.A., 1875 (*s*), any urban authority may by agreement with any person liable to repair any street, which includes a non-county bridge, take over the maintenance, repair, cleansing and watering of the street.

The extinction of *ratione tenuræ* or other private liability and its transfer to the highway authority, in all cases affecting classified roads, is encouraged by the M. of T. [471]

Agreements.—In addition to the agreements made under the Bridges Act, 1929, dealt with later, by sect. 3 of the Highways and Bridges Act, 1891 (*t*), highway authorities may make agreements with each other for the construction, reconstruction, alteration or improvement, or the freeing from tolls, of any bridge, including the approaches, and the expenses are to be part of the highway expenses, in proportion as agreed. Sect. 147 of the P.H.A., 1875 (*u*), as to the construction and repair of canal, railway or tramway bridges, seems in effect to be superseded by the Bridges Act, 1929 (*a*).

By sect. 6 of the Crown Lands Act, 1906 (*b*), the Commissioners of Works may convey to a bridge authority willing or able to receive it any bridge under their management, and any land for widening and improving any bridge, with approaches and abutments, either unconditionally or subject to agreed terms. [472]

The Ministry of Transport.—With the increase of motor traffic it became increasingly evident that more money must be spent on the construction and maintenance of roads and bridges than it was possible for the highway authorities to produce from rates, and that some co-ordinating body was necessary. The Development and Road Improvement Funds Act, 1909, set up a Road Board and gave them powers to give grants for the construction and maintenance of roads and bridges. By the M. of T. Act of 1919, the Board was succeeded by the Minister of Transport (see under title MINISTRY OF TRANSPORT). By sect. 8 of the Act of 1909 (*c*), the Minister is empowered, with the consent of the Treasury, to advance money to highway authorities for the construction of new roads or the maintenance and improvement of existing roads, and also to construct new roads himself. By sub-sect. (5) of that section "roads" are to include "bridges," and "improvements," by sect. 2 of the Roads Improvement Act, 1925 (*d*), are to include the "freeing of roads from tolls." Pursuant to sect. 2 of the M. of T. Act, 1919 (*e*), the powers of the Road Board in relation to roads, bridges and ferries, and vehicles and traffic thereon, were transferred to the Minister of Transport. By sect. 11 of that Act (*f*), an appeal lies to the Minister of Transport in respect of any restriction upon any traffic passing over or seeking to cross any bridge or culvert, and the Minister, notwithstanding any statute, may make an order concerning the strength, standard of maintenance, and maintenance of any bridge or culvert and the traffic using it. He may also apportion the expenditure involved, but he may not enlarge the pecuniary liability of any railway or canal company or impose a new liability. By sect. 17 (*g*), one of the purposes for which the Minister may give grants or loans,

(*r*) 10 Statutes 904, 975.

(*t*) 9 Statutes 192.

(*a*) 9 Statutes 268.

(*c*) 9 Statutes 212.

(*e*) 3 Statutes 422.

(*s*) 13 Statutes 685.

(*u*) 13 Statutes 684; and see *ante*, p. 243.

(*b*) 3 Statutes 328.

(*d*) *Ibid.*, 220.

(*f*) *Ibid.*, 432.

(*g*) *Ibid.*, 435.

subject to the approval of the Treasury, out of moneys provided by Parliament not exceeding one million pounds at any one time for the purpose of any work, to any authority, company, or person, is "for the construction, improvement, or maintenance of roads, bridges or ferries." By sub-sect. (2) of this section the Minister is empowered to classify roads in such manner as he thinks fit. [473]

Prohibition and Restriction of User.—The law as to the prohibition and restriction of the user of bridges is now contained in sect. 30 of the Road and Rail Traffic Act, 1933 (*h*), which comes into force at a date to be decided by the Minister of Transport. This section replaces sect. 25 of the Road Traffic Act, 1930 (*i*), which never came into operation, but had repealed sects. 6 and 7 of the Locomotive Act, 1861, and sects. 6, 7 and 8 of the Locomotive Act, 1898, which formerly contained the law on the subject. Sect. 30 of the Act of 1933 (*h*) gives power to a bridge authority (*j*), if satisfied that a bridge over which a road passes is insufficient to carry vehicles of certain weight or axle weights, to place conspicuous notices, prohibiting the user of the bridge, in a prescribed form in a proper position at each end of the bridge. The "weight" means the weight when laden, "axle weight" means the weight transmitted by a vehicle to any transverse strip of the road surface five feet in breadth, and for the purposes of the section a vehicle and a trailer are to be taken as a single vehicle. The "proper position" is one either on or near the bridge, or on the road leading to the bridge, so as to be visible at a reasonable distance from the bridge to the drivers of vehicles approaching it. The highway authority of any road leading to a bridge must give to the bridge authority reasonable facilities for placing any such notice on the road and, if the highway authority desires it, the bridge authority must erect warning notices in the prescribed form at the principal junctions of roads leading to the bridge.

The notices may either prohibit the use of the bridge by any vehicle of which the weight exceeds a maximum weight specified in the notice, which must not be less than five tons, or by any vehicle of which any axle weight exceeds a maximum specified, not being less than three tons, or may restrict vehicles of a specified weight or axle weight to a maximum speed.

If a vehicle is driven across the bridge, in contravention of such a notice, the person driving it, or any one causing or permitting it to be so driven, is liable to a fine not exceeding twenty pounds for a first offence, and to a fine not exceeding fifty pounds upon a subsequent conviction, without prejudice to any civil liability incurred in the case of damage being done to the bridge. In any such proceedings, if the prosecutor satisfies the court that there are reasonable grounds for believing that the weight of the vehicle exceeds the maximum weight specified in the notice, or that the axle weight exceeded the maximum specified, the *onus probandi* is on the defendant that the weight of the vehicle or every axle weight of the vehicle, as the case may be, did not exceed the maximum weight or the maximum axle weight.

The bridge authority must give twenty-eight days' notice to the Minister of Transport of their intention to place a restriction or prohibition on the use of a bridge, with particulars of the prohibition or restriction, and the Minister must cause a list of these to be kept open to inspection.

(*h*) 26 Statutes 895.

(*i*) 23 Statutes 629.

(*j*) This expression means the authority or person responsible for the maintenance of a bridge (s. 36 (1); 26 Statutes 906, applying the definition in the Road Traffic Act, 1930, s. 121; 23 Statutes 686).

Any person or body of persons aggrieved by a restriction or prohibition on the use of a bridge, and any highway authority in whose area the bridge is situated, may apply to the Minister for an order modifying or removing the restriction or prohibition. The Minister must then cause the bridge to be inspected, and may require the bridge authority to give to his inspector information as to its structure and condition and any other facilities for his investigation of the circumstances that they can give. After considering the report of his inspector and any representation made to him by the bridge authority, he may then, if he thinks proper, make an order modifying or removing the restrictions or prohibitions, or imposing different restrictions, and the bridge authority must cause notices complying with the order to be erected within a time specified in the order. If they do not do so, the Minister may have the notices complained of removed and new ones erected, and he may recover the cost of doing this as a civil debt from the bridge authority. The costs incurred in the inspection and investigation are to be dealt with as if they were costs incurred in connection with an inquiry under the Act to which the applicant and the bridge authority were parties. By sect. 47 (*jj*) these costs, including such reasonable sum not exceeding five guineas a day as he may determine for the services of any officer engaged, may be ordered by the Minister to be paid by such party as he thinks fit, and the Minister may certify the amount, which is recoverable either as a debt due to the Crown or by the Minister summarily as a civil debt.

The Minister may at any time, on his own authority, or on an application made to him by the bridge authority, vary or revoke any order he has made under the section, if he is satisfied that it is proper to do so.

By the above Acts the duties and powers of the Minister of Transport in regard to bridges are set out, and it is with the grants given by the Minister from the Road Fund that most of the work of late years in the building of new bridges has been carried out. First among these are the great new bridges on the trunk roads (see title *BY-PASS ROADS*), and secondly the rebuilding of many of the old county bridges on the main roads. Among these are several floating bridges, and as has already been stated, these are dealt with in the title *FERRIES*, but in replacement of ferries and floating bridges, there have been built transporter bridges, in order to avoid not only the hindrance that the piers of bridges are to navigators on the river, but their effects on tidal flow and erosion of the river bed. The Board of Trade requirements as to the height above the water of fixed positions of these structures varies with the character of the shipping and the known requirements up to a maximum of 95 feet. The Minister is enabled by the grant to keep in touch with all new bridge schemes, as they must be submitted to him, and the design must incorporate standard loading and impact factors (*k*), and be accompanied by full calculations and a detail plan. Consideration must also be given to aesthetic requirements, environmental and general suitability of type (*l*). Each case must be considered also from the standpoint of traffic advantage and national policy. [474]

Statutory Owners.—The repair and maintenance of the bridges of statutory owners is governed by the private Act by which the company

(*jj*) 26 Statutes 911.

(*k*) See Circular of M. of T., dated 1931, on "Standard Loading for Highway Bridges—Concrete Stresses."

(*l*) See *post*, p. 257.

—railway, canal, tramway, light railway or electricity—was created, and by various sections of the “Clauses” Act which are incorporated in them. As to canal bridges, see under title CANALS. As to railways the relevant clauses are sects. 46 to 51 of the Railways Clauses Consolidation Act, 1845. By sect. 46 of this Act (*m*), if the railway line crosses any public highway, unless otherwise provided in the special Act, the road must be carried over the railway or the railway over the road by a bridge, of the type provided in the Act of 1845 or the special Act, and the bridge and the immediate approaches and all other necessary works connected with it, are to be executed and maintained for all time by the railway company. It is provided, however, that with the consent of the justices, it may be lawful for the company to carry the line across any highway other than a public carriage road, on the level. Such permission is also given by many private Acts.

Many cases have arisen as to the degree of maintenance necessary in regard to such bridges. In *A.-G. v. Great Northern Rail. Co.* (*n*), it was decided that “where a public highway is carried over a railway bridge by means of a bridge constructed under the provisions of sect. 46 of the Railways Clauses Consolidation Act, 1845, the railway company is liable to maintain the bridge in the condition as to strength in relation to the traffic in which it was at the date of completion, but it is not liable to improve and strengthen the bridge to make it sufficient to bear the ordinary traffic of the district which may reasonably be expected to pass over it according to the standards of the present day.” There is a duty to “reconstruct” if “maintenance” necessitates it (*o*). A public footpath is not a public road according to this section and a railway company need not therefore make a bridge over it or under it (*p*); neither is a private street (*q*). Sect. 51 of the Act (*r*) requires a railway company to widen a bridge if so required by a highway authority, when the road on either side is widened beyond the width of the bridge. This was held to apply only to the bridge proper, exclusive of the approaches (*s*), and footpaths were not to be considered part of the width (*t*).

The Tramways Act, 1870 (*u*), does not require tramway companies to construct any bridges, but it contains restrictions with respect to the construction of tramways over bridges, and requires roads broken up by the company to be reinstated and to a certain extent maintained at their expense for six months (see title BREAKING UP OF ROADS, at pp. 236, 239, *ante*). [475]

(*m*) 14 Statutes 47.

(*n*) [1916] 2 A. C. 356; 26 Digest 582, 2719. See also *A.-G. for Ireland v. Lagan Navigation Company*, [1924] A. C. 877; 26 Digest 582, 2717, and *A.-G. v. Hornsey B.C.*, [1927] 1 Ch. 331; Digest (Supp.), and *Sharpness New Docks v. A.-G.*, [1915] A. C. 654; 26 Digest 581, 2716, and *R. v. East and West India Dock Company* (1888), 60 L. T. 232; 26 Digest 581, 2715; and as to the raising of a canal bridge in connection with the raising of a towing path, see *Great Western Railway v. Monmouthshire C.C.* (1929), 27 L. G. R. 295, 569; Digest (Supp.).

(*o*) *N. Staffs. Railway v. Hanley Corpn.* (1909), 73 J. P. 477; 26 Digest 574, 2661.

(*p*) *Dartford R.D.C. v. Bealey Heath Railway Company*, [1898] A. C. 210; 38 Digest 266, 83.

(*q*) *Caledonian Railway Company v. Glasgow Corpn.*, [1909] A. C. 138; 38 Digest 272, 128.

(*r*) 14 Statutes 49.

(*s*) *Rhondda U.D.C. v. Taff Vale Railway Company*, [1909] A. C. 253; 38 Digest 271, 115.

(*t*) *R. v. Rigby* (1850), 14 Q. B. 687; 38 Digest 268, 100.

(*u*) Ss. 26, 27, 28; 20 Statutes 15, 16.

Light railways are authorised by order of the M. of T. (v). Particulars of any bridges to be built are to be sent to the Minister when an application is made for an order by clause 22 of the rules made under the Light Railways Acts of 1896 and 1912 (w). The Railways Clauses Consolidation Act, 1845, is not to apply unless expressly incorporated in the order (a). [476]

By sect. 39 of the L.G.A., 1929 (b), in any case where a public utility undertaking sustain damage by the exercise of any powers under that Act by a county council, in succession to a local authority under the P.H.A., 1875, they have a right to compensation under sect. 308 of the P.H.A., 1875 (c).

The Telegraph (Construction) Act, 1911 (d), enables the Postmaster-General to execute certain works over, upon, or under canals and railways which are crossed by bridges. As to the need of re-instating streets and bridges under the Gas and Waterworks Clauses Acts and the Electric Lighting Acts, see title BREAKING UP OF ROADS.

By sect. 35 of the Electricity (Supply) Act, 1926 (e), the Central Electricity Board must bear the expense of altering any of their cables and wires where they would be interfered with by any rebuilding, widening or repairing of a bridge by a county council, and see the provisions made in the Bridges Act, 1929, *post*. [477]

Bridges Act, 1929.—The Bridges Act, 1929 (f), applies only to bridges which carry public carriage roads and are not maintainable by highway authorities, that is, in general, the bridges of railway and other statutory undertakers, and bridges repairable *ratione tenure* or by prescription by private bodies or persons. Many of these bridges are unsuitable for heavy traffic, and under a private Act restrictions are often imposed which are a burden on those wishing to use the highway. As has been stated also, in the great majority of cases the owners of these bridges are not bound to maintain them at a higher standard than was sufficient to carry the volume and weight of traffic which existed when the bridge was originally built. It has not been possible to strengthen or reconstruct them with the assistance of grants from the Road Fund because the Minister of Transport can make grants from the fund only to, or in conjunction with a highway authority, and not direct to a private owner (g). The owners of the bridges, owing to clauses in their private Acts, are generally unable to transfer their property in the bridge or their liabilities to highway authorities. The Act of 1929 was passed, therefore, to enable the Minister, in conjunction with the highway authorities, to strengthen and repair such bridges, and the abutments of the bridge, which, for the purposes of the Act, include the road carried thereby and the approaches to it (h). The authority who are to

(v) See s. 68 of the Railways Act, 1921; 14 Statutes 362, which by s. 74 is to be construed as one with the Light Railways Act, 1896.

(w) S.R. & O., 1913, No. 1111 and 1914, No. 1380.

(a) Ss. 12 (1) and 28 of Light Railways Act, 1896; 14 Statutes 257, 262.

(b) 10 Statutes 913.

(c) 13 Statutes 755.

(d) 19 Statutes 300.

(e) 7 Statutes 814.

(f) See M. of T. Circular, No. 296 (Roads), dated July 5, 1929.

(g) Development and Road Improvement Funds Act, 1909, s. 8 (1), as amended by the Roads Act, 1920, s. 4; 9 Statutes 212.

(h) S. 1; 9 Statutes 268 and s. 14; 9 Statutes 274. By s. 14 "Approach" is defined as including "any road and the works supporting and carrying such road for the maintenance of which the owner of the bridge is responsible, and which connect the bridge with a road for the maintenance of which a highway authority is responsible."

exercise the powers under the Act are the county borough council, where the bridge is in a county borough, the common council where it is in the City of London, the county council where it is in a rural district and also where it is in an urban district and the road at each end is vested in the county council; and in regard to all other bridges, the council of the county, metropolitan borough or urban district in which the bridge is situate or by these councils jointly (sect. 1 (2)). It is evident that the expressions "urban district" and "urban district council" used in the sub-section are used in the sense given by sect. 21 of the L.G.A., 1894, and are intended to cover a non-county borough and the council of any such borough, as well as an urban district and an U.D.C. Where a bridge is partly in one area and partly in another, any council may exercise the powers of a highway authority with regard to it, if the council could have exercised those powers had the bridge been wholly situate in its own area. [478]

Sect. 2 of the Act (i), gives highway authorities power to make agreements with bridge owners, in spite of any private Act, either (i.) for the payment by the highway authority of contributions towards the cost of the maintenance, improvement or reconstruction of the bridge, or the road carried thereby, or the approaches thereto (k); (ii.) for the transfer of the responsibility for the maintenance and improvement of the road carried by the bridge or its approaches to the highway authority; and (iii.) for the transfer of the property in the bridge and of all or any rights and obligations attaching to it to the highway authority. Where there is such a transfer, the highway authority has power to exercise any rights and they are subject to the obligations so transferred, to the exclusion of the owner. Sect. 3 (l) provides for cases where agreements of this nature either cannot be arrived at or are considered less suitable than an order of the Minister. Either the owner or the highway authority may apply to the Minister for an order, and the Minister after consultation with the owner of the bridge and every highway authority entitled to exercise the powers in the Act, and after holding an inquiry if requested by any such authority, may by the order require the execution of any works specified in the order, or determine and direct by whom the bridge shall be maintained, and in the case of a swing bridge (which is defined by sect. 14 (m), as including any opening bridge operated by mechanical means) by whom and in what manner it shall be operated. Where such a swing bridge crosses a canal, however, he cannot direct that the bridge shall be operated otherwise than by the owner unless he is satisfied after considering any representation made by the owner that the facilities for traffic on the canal will not be prejudiced. He may also by the order transfer and vest in the highway authority the property in the bridge and any rights and obligations, and modify any statutory provisions applicable to the bridge other than the provisions of any general Act. This, however, must not be done in relation to a bridge crossing a railway or canal so as to modify provisions relating to the headway of the bridge or the width of the canal without the consent of the owner or relating to precedence of traffic in the case of a swing bridge. No order under the Act may be made with regard to a toll bridge (n), and

(i) 9 Statutes 268.

(k) "Reconstruction" includes the construction of a new bridge and approaches thereto in substitution for an existing bridge and its approaches (s. 14; 9 Statutes 275).

(l) 9 Statutes 269.

(m) *Ibid.*, 275.

(n) S. 3 (5); *ibid.*, 270. See *post*.

before making an order with respect to a bridge crossing tidal lands (*o*), the Minister must consult with the Board of Trade and include any provision suggested by the Board (*o*). The Minister must also take into consideration, before making an order, the desirability of special facilities or accommodation being provided for carrying across the bridge the mains, pipes, cables or wires of public utility undertakings (*p*), but if the provision of greater facilities increases the cost of the reconstruction or improvement, he must have regard to any contribution that the undertakers are willing to make. The Minister may postpone the date of the operation (*q*) of an order where it appears to him that, owing to the number or nature of the orders and applications affecting the same highway authority or bridges belonging to the same owner, it would involve hardship. Under sect. 10 of the Act (*r*) the Minister was empowered to make rules in relation to matters preliminary to the making of orders under the Act, and these were made in 1930 (*s*). As regards costs, sect. 6 (*t*) provides that where an order has been made for the reconstruction or improvement of a bridge, the expenses of the work should be borne according to agreement, but that the owner should contribute to the extent of his existing liability, and the balance is to be paid by the highway authority, subject to arbitration (*u*) under the Arbitration Act, 1889, in the case of any differences arising. The Minister may hold inquiries under this Act and sect. 20 of the M. of T. Act, 1919, is applied (*a*). [479]

By sect. 4 of the Act (*b*), the consent of the owners is required before an order can be made with respect to a bridge owned by a railway company which carries a road over a railway of the company, or carries both a road and a railway of the company, or in respect of a bridge owned by a dock authority (*c*). A similar consent is necessary for the alteration or reconstruction of a bridge owned by a railway company or a canal (*d*) company and crossing a railway or canal of the company, or owned by a dock authority and crossing any railway, lock, passage or other work of the dock authority, in such a manner as to necessitate any alteration in the level or reduction in the width of that railway, canal, lock, passage or work, or to reduce the headway of the bridge as existing at the date of the order.

An order requiring the reconstruction of a bridge crossing a canal, or its approaches, is to direct (*e*) the structure of the bridge and the road carried thereby and the approaches to be maintained by a highway authority, unless the owner of the bridge agrees to the contrary. Nothing must be done, however, to stop the traffic on any canal without the consent of the owner or to interfere with it except for a temporary

(*o*) S. 3 (3); 9 Statutes 270. By s. 14, *ibid.*, 275, "tidal lands" are defined as "such parts of the bed, shore or banks of a tidal water as are covered and uncovered by the flow and ebb of the tide at ordinary spring tides."

(*p*) S. 3 (4); *ibid.*

(*q*) S. 3 (6); *ibid.*

(*r*) *Ibid.*, 273.

(*s*) M. of T. (Bridges Procedure) Rules; S.R. & O., 1930, No. 756.

(*t*) 9 Statutes 271.

(*u*) S. 7; *ibid.*, 273; 1 Statutes 453.

(*a*) 3 Statutes 436.

(*b*) 9 Statutes 270.

(*c*) Defined in s. 14; *ibid.*, 275, as "the owners of any harbour or dock undertaking established by Act of Parliament."

(*d*) "Canal" includes inland navigation and the towing paths, s. 14; *ibid.*

(*e*) S. 4; *ibid.*, 270.

stoppage, but this consent cannot be unreasonably withheld, as to which a decision may be made by the Minister.

Where an order is made under the Act, any statutory provision in force with regard to the bridge for the protection of any public utility undertaking (*f*) must remain in force unless an agreement is made between the parties concerned, and the provisions are to apply to the highway authority in the same way as they applied to the owners before the transfer.

In the Circular already referred to, the Minister stated that where a highway authority assumes an additional liability in respect of the reconstruction or improvement of such a bridge, he is prepared in approved cases to make grants from the Road Fund up to 75 per cent. of the approved net cost falling on the authority, and in cases where the authority merely takes over the responsibility for the maintenance of the road, assistance at the rate applicable to the class of road on which the bridge is situated. He emphasised this in a further Circular (*g*), and pointed out the need where arrangements involve a transfer, of obtaining adequate contribution from the owners. He also stated that the approved fees of any consulting engineers would rank for grant with the cost of the works. In a later Circular (*h*) he stated that the above rate of grant would be continued for the financial year 1933—34, and invited highway authorities to submit any proposed agreement for his consideration, so that he might express his views as to the reasonableness of the terms before the agreement was made. He said also that the 75 per cent. grant would also be made where the improvement of a privately owned bridge involves lengthening the span or increasing the height of the bridge. [480]

Toll Bridges.—There still exist toll bridges with charters or private Acts giving the right to various bodies or persons to levy toll. Many of these belong to statutory companies such as railway, canal and dock companies, and have often taken the place of ferries (see the Ferries (Acquisition by Local Authorities) Act, 1919 (*i*), dealt with under the title FERRIES). A toll was described in *Simpson v. Denison* in 1852 (*j*) as “a payment for the right of passing along a highway, public or private,” and it may be granted in connection with human beings, animals or vehicles, and as to weight and speed, and in the charter or private Act certain classes of people and goods may be exempted. Exemptions are made by statute for the Police (*k*), the Army (*l*), Reserve Forces (*m*) and Territorials (*n*), and Post Office officials and vehicles (*o*).

As already stated, by sect. 3 of the Highways and Bridges Act, 1891 (*p*), highway authorities may make agreements with each other for freeing from tolls any bridge, including the approaches, wholly or

(*f*) S. 5. By s. 14, 9 Statutes 275, “public utility undertaking” means “any company or authority which carries on a gas, water, hydraulic power, electricity, tramway, light railway or trolley vehicle undertaking.”

(*g*) M. of T. Circular, No. 315 (Roads), dated March 17, 1930.

(*h*) M. of T. Circular, No. 382 (Roads), dated May 26, 1933.

(*i*) 8 Statutes 660.

(*j*) (1852), 10 Hare 51; 26 Digest 336, 666.

(*k*) County Police Act, 1840, s. 1; 3 & 4 Vict. c. 88.

(*l*) Army Act, 1881, s. 143; 17 Statutes 208.

(*m*) Reserve Forces Act, 1882, s. 23 (1); *ibid.*, 257.

(*n*) Territorial and Reserve Forces Act, 1907, s. 28 (2); *ibid.*, 292.

(*o*) Post Office Act, 1908, s. 79; 13 Statutes 69.

(*p*) 9 Statutes 192.

partly situated within the area of one or more of the authorities making the agreement, and the Minister of Transport, under sect. 8 (1) and (5) of the Development and Road Improvement Funds Act, 1909, amended by the Roads Act, 1920 (*q*), may make advances and grants to any highway authority for the improvement of existing roads which include bridges, while by sect. 2 of the Roads Improvement Act, 1925 (*r*), this includes "freeing of roads from tolls." Under the Bridges Act, 1929, the power of a highway authority to acquire a bridge by order, does not cover a toll bridge (*s*). This matter was therefore dealt with in the Road Traffic Act, 1930, by sect. 53 (*t*), the object of which was described by the Minister as "to secure the ultimate extinction of as many toll rights as possible" (*u*). The section authorises the council of any county, county borough or urban district within whose area a toll bridge is situated to take it over with or without the rights and obligations connected with it, either by agreement with the owner, or compulsorily. The council cannot take over compulsorily, however, a bridge vested in a statutory dock or harbour authority, and they cannot require the property in the structure of any bridge vested in a railway company to be transferred to them, though they can acquire compulsorily the right to take tolls in respect of it. The procedure for compulsory acquisition is by official notice to treat and the consideration to be paid is to be determined, in default of agreement, under the Acquisition of Land (Assessment of Compensation) Act, 1919 (see titles COMPENSATION ON ACQUISITION OF LAND AND COMPULSORY PURCHASE OF LAND). The right to take tolls by the council is exercisable only for such a number of years as may be allowed by the Minister in the particular case.

A bridge so transferred to a county council will become a county bridge and in other cases an ordinary bridge vested in the acquiring council. By sub-sect. (6) of sect. 53 (*a*), any councils so empowered to take action in regard to a bridge may make agreements with one another, subject to the Minister's approval, for one council to exercise their powers on behalf of another, and in such agreement they may make provision as to the contribution to be made by each party towards the expenses involved and as to the transfer of property, rights or obligations. Where part only of a toll bridge or road is situate in the area of a council, that council is authorised by sub-sect. (5) (*b*), to take action by means of an agreement under sub-sect. (6), but cannot take action independently. If, for instance, part only of a toll bridge is situate in an urban district, but the whole of the bridge is within one county, the county council could act independently, but the urban council could only act by agreement with the county council. If, on the other hand, the bridge were situate partly in one county and partly in another or in a county borough, neither council could take action except by agreement.

A council may borrow for the purpose of these powers under the enactments applicable to them as a highway authority. The grant from the Road Fund for this work was fixed (*c*) on May 26, 1933, at 50 per cent. [481]

(*q*) 9 Statutes 212.

(*s*) S. 3 (5) ; 9 Statutes 270.

(*u*) See Circular No. 356 (Roads) of the M. of T., dated March 2, 1931.

(*a*) 23 Statutes 649.

(*r*) *Ibid.*, 220.

(*t*) 23 Statutes 648.

(*b*) *Ibid.*

(*c*) Circular No. 382 (Roads) of the M. of T., dated May 20, 1933, where the Minister says, "Highway authorities will doubtless consider the possibility of exercising their powers in suitable cases, and so far as funds will permit the Minister will be prepared to entertain applications for grants from the Road Fund."

Footbridges.—As already mentioned, it was decided in *R. v. Salop Inhabitants* in 1810 (*d*), that the question whether a bridge is repairable at the public expense is to be decided without reference to whether it is a footbridge, a horse or a carriage-bridge, so that the law, therefore, as to the repair of footbridges is the same as that already described. In the *Tinker's Bridge Case*, however, in 1852 (*e*), an ancient bridge which carried a public footpath over a stream a foot and a half deep in summer, though frequently deeper in winter, and consisted of three oak planks about 9 or 10 feet long, with a hand-rail, was held not to be a bridge of such a kind that the county ought to repair it. In *A.-G. v. Hornsey Borough Council* in 1927 (*f*), it was pointed out that if a bridge were not a "county" bridge it was repairable as part of the highway by the persons, if any, liable to repair the highway, but since the passing of the L.G.A., 1929, the county would be in any case liable to repair the bridge, unless they could prove that it was the duty of some other body or person. The highway authority may not, without the owner's consent, erect a bridge where none previously existed, or increase the burden of the user, when repairing a bridge. They cannot, for instance, replace stepping stones with a bridge (*g*), and neither the authority nor the public may trespass in order to repair a bridge (*h*). In one case, however (*i*), where a bridge had been repaired and enlarged and the owner complained that it allowed his cattle to roam, it was held that this was not a sufficient injury, and that he could put up a stile if necessary. [482]

Protection of Amenities.—In 1925 a Circular was sent from the M. of T. (*k*), to all local authorities with highway powers, on the "Design of Road Bridges." It was pointed out that few features, whether of countryside or town attract more notice than bridges, that many of them possess historical and archaeological interest, others illustrate the fitting use of local materials, and others often provide pleasing examples of modern methods of construction. So far as strength is concerned, the Circular went on to say, the Minister had already prescribed regulations, but it is possible for a bridge to comply with these regulations and yet fall short in architectural design and suitability to its surroundings. The Minister, therefore, impressed on highway authorities the need of securing at the outset reliable expert advice upon the design—not merely from the standpoint of the stability of the structure, but also of its proportions and artistic character, and he wished it to be known that when receiving applications for grants he should require to be satisfied that these considerations had been taken into account. He added that there was no reason to assume that the observance of these principles would add to the cost of construction, as past experience had shown that bridges were more frequently criticised for undue elaboration than for well-proportioned simplicity.

The fact that the wishes of the Minister have been appreciated and carried out by the highway authorities is becoming increasingly evident,

(*d*) 13 East 95. See *ante*, p. 244.

(*e*) *R. v. Southampton County Inhabitants* (1852), 18 Q. B. 841; 26 Digest 589, 2787. See *ante*, p. 244.

(*f*) [1927] 1 Ch. 331; Digest (Supp.).

(*g*) *Radcliffe v. Marsden U.D.C.* (1908), 72 J. P. 475; 26 Digest 563, 2611, and see also *Sutcliffe v. Sowerby* (1859), 1 L. T. 7; 26 Digest 569, 2620.

(*h*) *Campbell Davys v. Lloyd*, [1901] 2 Ch. 518; 26 Digest 569, 2622.

(*i*) *R. v. Barnes* (1884), 1 T. L. R. 24; 26 Digest 570, 2624.

(*k*) Circular No. 224 (Roads), dated March 14, 1925. See also "British Bridges," published by the Organising Committee of the Public Roads and Transport Congress, 84, Eccleston Square, S.W.1, price 10s. 6d.

and it is evident from the annual reports of the administration of the Road Fund that care is being taken to preserve some of the very old bridges from destruction. Efforts have been made by the highway authorities and encouraged by the public to save many ancient bridges, especially those with a chantry or chapel built upon them. Frequent instances arise where the ancient structure if preserved is dangerous, weak, or unsuitable for modern traffic. In such cases suitable modern bridges have been built some distance away, and the ancient bridge scheduled as an ancient monument. Such monuments may be acquired by the Commissioners of Works or left in the guardianship of the local authority (see title ANCIENT MONUMENTS AND BUILDINGS). The bridge may also be protected under the Town and Country Planning Act, 1932 (*l*), and a picturesque bridge may be protected from advertisements (*m*), under the Advertisements Regulation Act, 1925, which by sect. 1 (*c*) (*n*) gives local authorities power to prohibit by bye-laws advertisements which disfigure or injuriously affect the amenities of any historic or public building or monument. As regards modern bridges, the highway authority have control over advertisements on bridges that are vested in them, but difficulties have arisen in preventing the disfigurement of a highway by advertisements on the face of a railway bridge that crosses it. The Scapa Society for the Prevention of Disfigurement in Town and Country (shortly known as the "Scapa Society") has, however, had some success in effecting amicable agreements with those who disfigure a highway in this way, and with the railway companies or other owners for the removal in such cases of offending advertisements. [483]

Nuisances on Bridges.—By sect. 1 of the Bridges Act, 1803 (*o*), county surveyors were given the same right to remove obstructions and annoyances from bridges as a surveyor of highways. By sect. 22 of the Highway Act, 1835 (*p*), all the powers of a highway surveyor in that Act for the prevention and removal of nuisances and annoyances were also given to the surveyor of county bridges. These powers are described in the title HIGHWAY NUISANCES.

By sect. 33 of the Malicious Damage Act, 1861 (*q*), it is made a felony unlawfully or maliciously to pull or throw down or otherwise destroy any bridge (whether over a stream of water or not), on or under which any highway, railway or canal passes or to do the bridge any injury with intent to render and so as thereby to render it dangerous or impassable.

A large number of bridges, built under private Acts over roads or carrying a road over a railway or canal, belong to railway and canal or dock companies. Clauses regulating the construction of railway bridges over roads or bridges carrying a road over a railway will be found in sects. 46—51 of the Railways Clauses Consolidation Act, 1845 (*r*), and are commonly incorporated with Railway Companies' Acts (*rr*). It is the duty at common law of a railway company owning a bridge to keep it in such a state of repair as to prevent injury to persons using a highway which passes underneath it (*s*).

(*l*) See that title, and also AMENITIES.

(*m*) See title ADVERTISEMENTS.

(*n*) 13 Statutes 1113.

(*o*) 9 Statutes 255. In part repealed by the L.G.A., 1933.

(*p*) *Ibid.*, 59.

(*q*) 4 Statutes 571.

(*r*) 14 Statutes 47—50; see also *ante*, p. 251.

(*rr*) These provisions are frequently varied by the incorporating Act.

(*s*) *Kearney v. London, Brighton and South Coast Railway* (1871), L. R. 6 Q. B. 759; 26 Digest 587, 2779.

The dripping of water from a railway bridge on to a highway beneath it was held not to be a nuisance injurious to health and abatable under sect. 8 of the Nuisances Removal Act, 1855 (*t*), though it might well be a public nuisance for which the railway company might be indicted (*u*).

Remedies.—No private action will lie against a county council for a personal injury sustained by non-repair of a county bridge (*a*) nor against the surveyor in person (*b*), but where a man was injured by tripping over a nail projecting from a bridge which the Port of London Authority were under a statutory duty to maintain in repair, and it was found that the injury was due to failure to maintain, it was held that the swing bridge was not a highway, and that the defendants were not in the position of a surveyor of highways and could not avoid liability on those grounds (*c*).

Remedies for the non-repair of a bridge (*d*) may be (*i.*) an action in the name of the Attorney-General for a declaration and an injunction, or (*ii.*) indictment, or (*iii.*) *mandamus*, which can only be obtained where there is a statutory obligation to repair, and only for the execution of some particular work (*e*). Any one may institute proceedings for an indictment and the defendants will be the body or person liable to repair, but not the surveyor in person (*f*).

Where an order is made by the Minister of Transport for the reconstruction, improvement or maintenance of a bridge under sect. 3 of the Bridges Act, 1929 (*g*), sub-sect. (2) of that section allows the Minister to modify, so far as he considers necessary to give effect to the order, any statutory provisions applicable to the bridge, other than those of any general Act, and he may not modify provisions relating to the headway of a bridge crossing a railway or canal or the width of the canal, without the consent of the owner of the railway or canal. [484]

London.—The Thames bridges in the county (other than railway bridges and the city bridges), excepting Westminster bridge, but including Deptford-creek bridge, were purchased by the Metropolitan Board of Works in 1877, at a cost of £1,376,825. Westminster bridge was built by the Government at a cost of £393,189, and was transferred to the Metropolitan Board of Works free of cost in 1887. The L.C.C. maintains these bridges and also the minor county bridges, *i.e.* the bridges over tributaries of the Thames carrying main roads that are not privately maintained by railway or canal companies. The City of London Corp'n. maintains the four bridges over the Thames from the City of London. The Victoria, Albert and Chelsea embankments were constructed by the Metropolitan Board of Works and responsibility for their upkeep subsequently devolved on the L.C.C. as the Board's successor. The present Vauxhall, Lambeth and Putney bridges were built by the L.C.C.

Bye-laws have been made by the L.C.C. for the regulation of certain

(*t*) Repealed by the P.H.A., 1875, and re-enacted in s. 91 of that Act; 13 Statutes 661.

(*u*) *Great Western Railway v. Bishop* (1872), L. R. 7 Q. B. 550; 26 Digest 439, 1561.

(*a*) *Russell v. Men of Devon* (1788), 2 Term Reports 667; 26 Digest 587, 2780.

(*b*) *M'Kinnon v. Penon* (1854), 9 Exch. 609; 26 Digest 538, 2782.

(*c*) *Guilfoyle v. Port of London Authority*, [1932] 1 K. B. 336; Digest (Supp.).

(*d*) See Pratt on Highways, 18th ed., at pp. 101—106.

(*e*) See *A.-G. v. Staffordshire C.C.*, [1905] 1 Ch. 336; 26 Digest 353, 797; and *R. v. Wills. and Berks. Canal Co.*, [1912] 3 K. B. 623; 16 Digest 295, 1082.

(*f*) *R. v. Poole Corp'n.* (1887), 19 Q. B. D. 602; 26 Digest 376, 1015.

(*g*) 9 Statutes 269.

bridges under the Metropolitan Board of Works (Various Powers) Act, 1882, sect. 41 (*h*), and the L.C.C. (General Powers) Act, 1892, sect. 40 (*i*).

The Metropolitan Bridges Act, 1881 (*j*), and the Metropolitan Board of Works (Bridges, etc.) Act, 1883 (*k*), contain provisions as to the laying of mains over bridges.

The maintenance and repair of roads over bridges are provided for by the Metropolitan Bridges Act, 1881, sect. 17 (*j*), the L.G.A., 1888, sect. 3 (viii.) (*l*), and the London Government Act, 1899, sect. 6 (2) (*m*).

The metropolitan borough councils are empowered by the Metropolis Management Amendment Act, 1862, sect. 72 (*n*), to take down and erect new bridges over canals, and maintain the same for the purpose of facilitating passage and traffic. [485]

(*h*) 20 Statutes 342.

(*j*) 44 & 45 Vict. c. xcii., s. 29.

(*l*) 10 Statutes 689.

(*n*) *Ibid.*, 984.

(*i*) 11 Statutes 1112.

(*k*) 46 & 47 Vict. c. clxxvii., ss. 26, 27.

(*m*) 11 Statutes 1228.

BRIDGES OVER STREETS

	PAGE		PAGE
GENERAL OBSERVATIONS - - -	260	PENALTIES - - -	261
LICENCES - - -	260	LONDON - - -	261
LOCAL AUTHORITIES CONCERNED -	261		

See also titles : BRIDGES ;
DELEGATION OF HIGHWAY POWERS ;
ROADS OR STREETS.

General Observations.—Until the passing of the P.H.A., 1925, it was doubtful if it was legal for any person to construct a bridge over a street without the statutory authority given by a private Act. By sect. 27 (*a*) of the Act of 1925, where adopted in the case of an urban authority, an owner or occupier of any premises abutting upon a street, may construct and use a way by means of a bridge across the street, if he first obtains a licence from the local authority. This affects generally shops, factories or hospitals that are situated on the two opposite sides of a street, where passage from one part to another over the street increases the convenience of the premises. [486]

Licences.—A licence granted by the local authority may contain such terms and conditions as they think fit, but no sum of money must be paid for it except a reasonable sum for legal or other expenses incurred by them (*b*). The licence must not authorise any interference with the convenience of people using the street, or affect the rights of the owners of property abutting on the streets, or the rights of tramway, railway, dock, harbour or electricity companies (*c*). It must also be a condition of every licence that the owner or occupier must remove or alter the bridge at his own expense if the local authority ask him to do so in connection with any improvements they may be making

(*a*) 13 Statutes 1124.

(*c*) *Ibid.*, s. 27 (1) (*b*) ; *ibid.*

(*b*) P.H.A., 1925, s. 27 (1) (*a*) ; 13 Statutes 1124.

to the street at any time (*d*). There is no appeal against such a request by the local authority, but there is an appeal to quarter sessions if they should refuse a licence when asked for it (*e*). The condition may be enforced by a local authority against the owner for the time being of the premises, and it should be registered as a local land charge under the Land Charges Act, 1925 (*f*).

If the work done or authorised by the licence involves any alteration of any telegraphic line of the Postmaster-General the conditions set out in sect. 7 of the Telegraph Act, 1878 (*g*), apply, and the bridge is to be deemed part of any street which it crosses for the purposes of the placing or maintenance of over-ground telegraphic lines under the powers conferred by the Telegraph Acts, 1863 to 1925 (*h*). [487]

Local Authorities Concerned.—Sect. 27 is in Part II. of the P.H.A., 1925, and is therefore adoptive by any urban district council, which includes county borough and borough councils (*i*), but as respects county roads in non-county boroughs and urban districts (not being roads which the borough or urban district council have claimed or are deemed to have claimed to maintain and repair) the powers conferred by sect. 27 were transferred to the county council by sect. 31 of the L.G.A., 1929, and Part III. of the First Schedule to that Act. When the Act of 1925 was passed it was also adoptive by rural district councils, but when the counties became the highway authorities under the L.G.A., 1929, sect. 27 was one of the sections for the administration of which the county council became the authority without any necessity for adoption, and in rural districts the powers conferred by it are now exercisable exclusively by county councils (*j*), though the county council may delegate their powers to the R.D.C. (*k*). [488]

Penalties.—If any one constructs a bridge in any district in which the section is in force, without first obtaining a licence in this way, unless he has statutory powers, or if he constructs or uses it otherwise than in accordance with the terms and conditions of his licence, or if he fails to remove or alter a bridge when required to do so, or fails to remove it under any term or condition of his licence, he is liable to a penalty not exceeding twenty pounds, and to a daily penalty of five pounds for a continuing offence (*l*). The "daily penalty" is defined in sect. 13 of the P.H.A. Amendment Act, 1907, as "a penalty for each day on which an offence is continued after conviction" (*m*). [489]

London.—Sect. 27 of the P.H.A., 1925, does not apply to the Metropolis.

Under the Highway Acts and under the Metropolis Management Act, 1855, sect. 96 (*n*), all that is vested in the highway authority is

(*d*) P.H.A., 1925, s. 27 (1) (*c*); 13 Statutes 1124.

(*e*) *Ibid.*, s. 7; 13 Statutes 1117; and P.H.A. Amendment Act, 1907, s. 7 (1) (*b*); 13 Statutes 913.

(*f*) P.H.A., 1925, s. 27 (1) (*c*); 13 Statutes 1124; Land Charges Act, 1925, s. 15 (7) (*b*) (as amended by the Law of Property (Amendment) Act, 1926, Schedule); 15 Statutes 540.

(*g*) 19 Statutes 265.

(*h*) P.H.A., 1925, s. 27 (1) (*d*); 13 Statutes 1125. For Telegraph Acts, 1863—1925, see 19 Statutes 219 *et seq.*

(*i*) P.H.A., 1925, s. 3; 13 Statutes 1116.

(*j*) L.G.A., 1929, s. 30 (2), First Sched., Part 1 and note; 10 Statutes 904, 975.

(*k*) L.G.A., 1929, ss. 35, 36; 10 Statutes 910 (see also title DELEGATION OF HIGHWAY POWERS).

(*l*) P.H.A., 1925, s. 27 (2); 13 Statutes 1125.

(*m*) *Ibid.*, 915.

(*n*) 11 Statutes 907. For the Highways Acts, see 9 Statutes 50 *et seq.*

the surface of the street together with such right above and below the surface as is essential to the maintenance, occupation, and exclusive possession of the street. In *Wandsworth Board of Works v. United Telephone Co. (o)*, BOWEN, L.J., said, "With regard to the area above the 'street' the Board of Works have not any proprietary interest above the 'street' except what is necessary to protect the street and the traffic from interruption or danger, or to enable them to exercise their powers in the street"; and COLLINS, M.R., in *Finchley Electric Light Co. v. Finchley U.D.C. (p)*, said, "That which is vested in the local authority is what is called the area of user. . . . All the stratum of air above the surface and all the stratum of soil below the surface which in any reasonable sense can be required for the purposes of the street as a street, vest in and belong to the local authority."

In the County of London, apart from the City, there appears to be no specific power in any local authority to control the erection of bridges over streets, and sect. 223 of the London Building Act, 1930 (*g*), exempts bridges from Parts VI. and VII. of that Act. Sect. 221 of the Act (*r*), in Part XVII., prohibits any person, not being lawfully authorised, from erecting any obstruction or encroachment whatsoever in, upon, over or under any street, or from altering or interfering with any street in such a manner as to impede or hinder the traffic. The metropolitan borough council may require the removal of the obstruction or encroachment, and reinstate or restore the street to its former condition.

In the City of London, sects. 51 and 52 of the City of London (Various Powers) Act, 1900 (*s*), prohibit the erection of a bridge or other structure across any street without the consent and approval of the corp'n. signified under their common seal, in addition to any other consent and approval that may be necessary under the London Building Act, and in default of such consent give the corp'n. power to compel its removal. [490]

(o) (1884), 13 Q. B. D. 904; 26 Digest 323, 607.

(p) [1903] 1 Ch., at p. 441; 26 Digest 329, 608. See also *University College v. Oxford Corp'n.* (1904), 68 J. P. 470; 26 Digest 320, 520.

(q) 23 Statutes 325.

(r) *Ibid.*, 319.

(s) 63 & 64 Vict. c. cccxxviii.

BRIDLEWAY

See ROADS CLASSIFICATION.

BRINE PUMPING

In those districts in which the brine pumping industry is carried on actively, serious damage is frequently done to property by subsidences consequent upon such pumping. The object of the Brine Pumping (Compensation for Subsidence) Act, 1891 (*a*), was to provide an effective remedy for persons who thus suffered loss through no fault of their own, and to distribute the burden of compensating them amongst the various brine pumpers in the district, instead of attempting to fix the responsibility upon individuals. [491]

The scheme of the statute is, briefly, as follows: compensation districts may be formed under the control of compensation boards.

(a) 12½ Statutes 54.

Every board may levy a rate upon all the brine pumpers in its district, and thus provide a compensation fund out of which to meet claims, the board adjudicating upon such claims subject to certain rights of appeal, and the persons who make such claims thereby abandoning their right to take any other legal proceedings in respect of the damage suffered by them (sect. 50).

The Act of 1891 allows the owners of land, in any county or county borough, of the aggregate value of not less than £2,000, and any sanitary authority, to present a memorial to the Local Government Board (now the Minister of Health) alleging that a subsidence of land belonging to those owners, or situate within the district of the sanitary authority, has been caused by brine pumping operations, causing loss or damage, and praying that a compensation district may be formed (sect. 3). After a local inquiry has been held, the Minister may make a provisional order (which must be confirmed by a Bill passed by Parliament) forming a compensation district and establishing a compensation board under the Act. It is believed that since the Act of 1891 was passed, only one provisional order under it has been made, viz. the order confirmed by the local Act (59 & 60 Vict. c. iv.) setting up the Northwich Salt Compensation District, which comprises the Northwich urban district and part of the Northwich rural district in Cheshire. The order is printed in the Schedule to the local Act.

Under sect. 11 of the Act of 1891, the number of members of a compensation board is to be fixed by the provisional order, but of those members one-third are to be appointed by the councils of the counties or county boroughs in which the district is situated, one-third are to be elected by the brine pumpers within the district, and one-third appointed by the sanitary authorities of any borough (not being a county borough) or district included within the compensation district. A brine pumper, or a person employed by a brine pumper, is ineligible for appointment by a county council, county borough council or sanitary authority. [492]

It remains to consider shortly the powers of such a board, and the rights to compensation conferred by the statute.

Every board must form and maintain a compensation fund for their district, by the assessment and levy of such rate for every 1,000 gallons of brine pumped or raised in the district as the board think necessary, but the rates in the aggregate in any period of twelve months must not exceed 3*d.* per 1,000 gallons so pumped or raised by each of the brine pumpers during the preceding twelve months (sects. 21, 38). [493]

The following are not entitled to receive compensation from any board :

- (1) Railway or canal companies in respect of buildings or other property in connection with the railway or canal, or used for the purposes of the traffic thereon.
- (2) Gas or water companies.
- (3) County councils or municipal corporations; and sanitary, highway, or other local authorities. Under sect. 36 of the Housing, Town Planning, etc., Act, 1919 (*b*), local authorities and county councils are entitled, however, to compensation in respect of injury or damage to houses belonging to them and provided under a housing scheme towards the losses on which the M. of H. are liable to contribute under that Act.

- (4) Brine pumpers.
- (5) Owners of land who receive brine rents, royalties for salt, or other remuneration or consideration, in respect of the lands for which such rents, royalties, etc., are paid.
- (6) Owners or occupiers of salt or alkali works, in respect of such works; and
- (7) The Trustees of the River Weaver Navigation (sect. 50).

Subject to these exceptions, any person may claim compensation for damage caused to any property by subsidence of the same or any other land which is the result of pumping or raising of brine, and has happened since the passing of the Act (sect. 23 (1)). He must have such title to or interest in the property damaged, or some part thereof, as would entitle him to recover in respect of such damage if the same had been caused by the wrongful excavation by any other person of *strata* underlying or supporting such property (*ibid.*); and his claim must be limited to the following heads of damage:

- (1) Depreciation of land (but not including any erection or works on or under such land, except as hereinafter mentioned) which shall subside or become permanently submerged, including any necessary expense of fencing in such land.
- (2) Destruction or structural damage of buildings and walls of all kinds, but not including damage to machinery or fixtures, whether removable or not.
- (3) The proper and necessary expense of building retaining walls, or bolting together or under-pinning, or otherwise supporting, raising or repairing buildings and walls.
- (4) The proper and necessary expense of altering the approaches to or the levels of lands or buildings.
- (5) The proper and necessary expense of raising, lowering, diverting, or making good private roads, bridges, fences, sewers or drains (sect. 22).

The subsidence must have happened since the passing of the Act, and notice must have been given, within six months of the damage becoming apparent, to the compensation board for the district, or, if a board has not yet been established, to the sanitary authority (sect. 23). [494]

Sect. 23 enables a board to make regulations as to the form and sending in and hearing of claims. It appears that the *onus* is on the claimant to prove that the damage was due to subsidence, but that, when he has done so, such subsidence is *prima facie* to be presumed to be due to pumping operations (sect. 24). Claims are to be disallowed to any extent to which the damage has been caused or increased by any neglect or default of the claimant or of any person by whose acts he is affected or bound, or by any buildings being improperly constructed or of an unnecessarily expensive kind, having regard to the liability of the district to subsidence. On any claim exceeding £1,000, the brine pumpers of the district are entitled to a hearing before the board (*ibid.*). There is an appeal on questions of title to the county court, and thence to the High Court (sect. 27), and also an appeal on points of law direct to the High Court by special case (sect. 28). In no case, however, can there be an appeal, by special case or otherwise, where the amount claimed does not exceed £100 (sect. 29). [495]

A board have power to purchase land on which they consider it desirable that no buildings shall be erected (sects. 31—33); they may

make contributions towards the extra cost of building or restoring buildings on some approved system which enables them to be raised (sect. 22); and may require sums awarded as compensation to be laid out in repairs and restoration (sect. 30). [496]

With regard to the compensation fund, the board may by bye-laws (subject to confirmation by the M. of H.) require brine pumpers to make returns as to the amount of brine pumped by them (sect. 41); and after ascertaining thus and by other means, if necessary, the amount of brine pumped in their district they may make a rate on the brine pumpers. The actual rate will be calculated according to their estimated requirements for meeting claims, and according to whether they think it necessary to form a reserve fund to meet exceptional claims (sect. 44). [497]

BROTHELS

See DISORDERLY HOUSES.

BUDGETARY CONTROL

	PAGE		PAGE
THE NEED FOR CONTROL OF EXPENDITURE - - -	265	Rate Stabilisation - - -	271
THE PRACTICE OF BUDGETING - - -	267	Rate Rationing - - -	272
THE IMPLICATIONS OF BUDGETARY CONTROL - - -	269	Rationalisation - - -	274
General Considerations - - -	269	THE REVENUE BUDGET - - -	275
		SUPPLEMENTARY ESTIMATES - - -	277
		THE CAPITAL BUDGET - - -	278

See also titles :

ACCOUNTS OF LOCAL AUTHORITIES ;
BORROWING ;
FINANCE ;
FINANCE COMMITTEE ;

FINANCE DEPARTMENT ;
GRANTS ;
RATE ESTIMATES ;
RATES AND RATING.

The Need for Control of Expenditure.—The total annual expenditure of local authorities has for many years been steadily rising, as may be seen by an examination of the annual reports issued by the M. of H. The report for 1932—33 sets forth comparative figures in the following statement :

EXPRESSED IN £ MILLIONS.

	1884-85.	1894-95.	1904-05.	1914-15.	1924-25.	1930-31.
Total expenditure other than out of loans - - -	44.1	59.7	107.7	153.3	354.9	432.7
Expenditure out of loans - - -	10.4	13.4	31.4	21.8	70.3	110.9
	54.5	73.1	139.1	175.1	425.2	543.6
Receipts from rates - - -	25.6	33.8	56.0	73.7	141.9	149.8
Receipts from Government grants (excluding capital grants) - - -	3.6	8.9	19.5	23.1	81.7	130.1

There are, of course, many reasons for this large increase in expenditure, among which may be cited the general development of the social services, *e.g.* public health, sewerage, the provision of free education, post-war house building, unemployment schemes, public assistance, etc. The increases are due in part to the creation of new local authorities since 1885, which brought into the local taxation returns expenditure which had formerly been borne by companies, school boards, etc. Moreover, the comparison will be definitely misleading unless differences in the purchasing power of the pound at the different dates are taken into account.

During the same period the population increased by fifty per cent., and the assessable or rateable value on which rates were levied increased by seventy-seven per cent. When due allowance has been made for all the above factors, it is nevertheless certain that, as intimated in the above report, the growth of expenditure on local services has been a marked feature of national life.

It will be noticed that an increasing proportion of the expenditure was met out of Government grants, the issue of which apart from grant under the L.G.A., 1929, involves approval of expenditure by the appropriate central department. In many cases the grant covers only a proportion of the approved expenditure, so that the local authorities in these cases are left to bear the remaining proportion of the expenditure which necessarily becomes a factor in calculating the rate levy. A further point arises in connection with the grants in respect of unemployment schemes which, although based on the expenditure met out of loan, attract a larger percentage of grant during the first half of the loan period and a considerably smaller percentage during the remainder of the period. Unless some method of equalising the grant payable has been adopted, the local authority will be faced at a later date with an increased charge in respect of such expenditure, and similar remarks apply to other grants, *e.g.* under the Housing Acts of 1923 and 1924.

Any consideration of the proportions of expenditure borne respectively by rates and Government grants must have regard to the fact that the figures for 1930-31 include the new general Exchequer grant under the L.G.A., 1929, and that the latter was intended to recoup local authorities for de-rating losses amounting to £24,000,000.

Whether the expenditure of local authorities is met by grants or rates, it does eventually constitute a charge on industry, through the medium of rates and taxes, since a considerable proportion of these is assessed on the trading community. In times of good trade the burden may not press so heavily, but when industry sinks into a trough of depression and seeks to reduce its expenditure, rates are not, generally speaking, amenable to the contraction possible in the case of other items of expenditure. The periodical "booms" and "depressions" observed in industry have their counterparts in the alternate periods of intense activity and comparative dullness in the expenditure of local authorities. These variations apply both to capital and revenue expenditure, but the capital expenditure of a local authority is merely deferred revenue expenditure, and as a consequence the trend of revenue expenditure will tend to be in an upward direction following a period of heavy capital expenditure.

The incidence of the "booms" and "depressions" of industry and that of the cycles of expenditure by local authorities are diametrically opposite in character. In the field of industry, when a depression is felt a falling off in revenue is experienced, and endeavour is then made

to reduce expenditure to the greatest extent possible. Rates, which in normal times represent but a fraction of the cost of production, become a heavy burden when production is curtailed, and local authorities are urged to restrict their expenditure in order to reduce the local rates. Such periods of depression, however, involve the local authorities in increased expenditure in order to provide relief in the nature of public assistance or works for the relief of unemployment. In addition, commitments previously entered into frequently at the instance of the Government, and involving capital expenditure and its corollary of loan charges, cannot be avoided, and the number of services on which expenditure can be reduced is, accordingly, somewhat restricted.

The difficulty of the position is emphasised when it is remembered that the depression will also affect the general body of ordinary rate-payers who, after payment of local rates, will have a less amount available for expenditure on purchases, again to the detriment of industry.

The ultimate effects of these "cycles" are, indeed, far-reaching, but sufficient has been mentioned to indicate the vital necessity for local authorities to survey closely their expenditure, and to adopt a system of financing the expenditure which will result in the minimum of dislocation to the financial operations of industry and the general body of ratepayers. The first essential to such a policy is some form of budgetary control. [498]

The Practice of Budgeting.—Sect. 12 of the R. & V.A., 1925 (a), provides that each local authority shall make such rates or issue such precepts as will be sufficient to provide for such part of the total estimated expenditure to be incurred by the authority during the period in respect of which the rate is made, or precept is issued, as is to be met out of moneys raised by rates, including in that expenditure any sums payable to any other authority under precepts issued by that authority, together with such additional amount as is in the opinion of the authority required to cover expenditure previously incurred (whether within six months before the making of the rate or issue of the precept as the case may be, or not), or to meet contingencies, or to defray any expenditure which may fall to be defrayed before the date on which the moneys to be received in respect of the next subsequent rate or precept will become available.

Local authority is defined in sect. 68 (b), as any body having power to levy a rate or to issue a precept to a rating authority, so that all authorities obtaining income from rates either by direct levy or precept, are covered by the above. The preparation of estimates of income and expenditure is not specifically provided for in the Act of 1925, but is implied in the expression "total estimated expenditure" above referred to (c). [499]

In the case of county councils, sect. 182 of the L.G.A., 1933 (d), provides as follows :

- (1) Before the commencement of every financial year a county council shall cause to be submitted to them an estimate of the income and expenditure of the council during that financial year, whether on account of property, contributions, rates, loans or otherwise.

(a) 14 Statutes 636.

(b) *Ibid.*, 686.

(c) Note also that the general rate is to be levied in lieu of any other rate which the authority has power to make and the latter powers often involved an estimate, e.g. Municipal Corpn. Act, 1882, s. 144 (1); 10 Statutes 623 (repealed by L.G.A., 1933).

(d) See 26 Statutes 405.

- (2) The council shall estimate the amounts which will be required to be raised in the first six months and in the second six months of the financial year by means of precepts.
- (3) If before the expiration of the first six months of the financial year, it appears to the council that the amounts estimated at the commencement of the year will be larger than is necessary, or will be insufficient, the council may revise the estimate and alter the said amounts accordingly.

The provisions of sect. 182 of the L.G.A., 1933 (*e*), are founded on sect. 74 of the L.G.A., 1888 (*f*). County councils are also empowered by sect. 183 (1) of the L.G.A., 1933 (*g*), to issue precepts for levying rates to meet all liabilities falling to be discharged by the council for which provision is not otherwise made, and under sects. 186, 189 and 192 (*h*), borough, urban, and rural district councils are given power to levy rates to meet all liabilities falling to be discharged by the council for which provision is not otherwise made. Parish councils and meetings issue precepts to the R.D.C. (sect. 193) (*i*).

Whilst the power to include requirements of various authorities in the rates levied, as above, is very wide, the provisions as to the estimates to be prepared are meagre in the extreme. It is, however, in detailed estimates of income and expenditure that the basis of any control must rest, since all proposed expenditure can there be reviewed in detail at its inception. Once the estimates have been approved and a total rate levy or precept arrived at therefrom, it is frequently impossible to make alterations, and it may be necessary in some cases to evolve a method of control which will take account of proposed expenditure prior to its inclusion in the estimates, *e.g.* capital expenditure, and this will be referred to in more detail subsequently.

Rate estimates in one form or another are utilised by the majority of local authorities, and as the usual procedure is for the operations of the authority to be managed in detail by committees consisting of a number of members of the council appointed by the council and invested with appropriate functions, their actions being subject to the overriding control of the council, the estimates are normally prepared on the same basis, *i.e.* each committee is responsible for the preparation of its own estimates. The form of estimate will usually contain comparative figures for a previous period, inserted by the chief financial officer, and other statistics according to the service under review and local predilections, together with the estimated expenditure and income for the ensuing period for which the rate or precept is required. These figures will usually be arrived at by the appropriate executive officer, in collaboration with the chief financial officer and chairman of the committee concerned, and should reflect the policy of the council having regard to any directions laid down by it, or previous approval of items of expenditure.

After compilation, the estimates will be submitted to the committee, which, after due consideration and amendment, if necessary, will approve the estimates for submission to the finance committee (if any) and/or to the council.

Sect. 86 of the L.G.A., 1933 (*k*), requires a county council to appoint

(*e*) 26 Statutes 405.

(*f*) 10 Statutes 746; repealed by L.G.A., 1933, except as to London.

(*g*) 26 Statutes 406.

(*h*) *Ibid.*, 407, 409, 410.

(*i*) *Ibid.*, 411.

(*k*) *Ibid.*, 353.

a finance committee, and sect. 8 (3) of the London Government Act, 1899 (*l*), imposes a similar requirement on metropolitan borough councils, but no obligation is imposed by the Act of 1933 on a borough council outside London, or a district council, to appoint a finance committee. A finance committee may be appointed, however, by any such council under the general provision in sect. 85 of the Act of 1933 (*m*), and it is suggested that a detailed examination of all estimates by a special committee, who perform the functions of a finance committee, even though not given this name, is essential to a proper system of budgetary control.

Where there is a finance committee, the collation of the detailed estimates of the various committees and consideration of them as a whole, is usually delegated to that committee, frequently with power to refer back to the particular committee any item which is considered unnecessary or excessive, or for any other reason. This review enables the chief financial officer to report comprehensively on the financial effect of the estimates, and generally results in a much more detailed scrutiny of them than would be the case where estimates are referred by the spending committee direct to the council. Where the spending and finance committees are unable to agree as to the deletion or amendment of any item, the matter is usually dealt with specifically by the council. The general position of the finance committee in a scheme of control is dealt with in the title **FINANCE COMMITTEE**.

The period of the budget will usually depend on the period of the rate and in the majority of cases will cover one financial year, although the yearly rate may be collected in two or more instalments. In some cases, however, authorities prepare yearly estimates but levy separate half-yearly rates, amending the estimates and rate levied, if necessary, for the second half-year, as contemplated by sect. 182 of the L.G.A., 1933 (*n*). In a few cases estimates are prepared by the committees for a period of six months only, the rate being levied for a like period. [500]

The Implications of Budgetary Control. General Considerations.—Any system of control must depend much on the efficiency and goodwill of the various spending committees, and a certain amount of elasticity within the framework of the system is essential in order that friction may be avoided. The operation of the services under a committee's control must be left substantially to the direction of the committee, and any very rigid system of control may defeat its own ends, by reason of the friction and unwillingness to co-operate which will result. It should be made clear, therefore, that implicit confidence is placed in each committee so to order the work entrusted to it as best to dovetail with the general scheme. Although it follows as a consequence that reliance will have to be placed on each spending committee to demand from the rates only such sums as will be sufficient to ensure the efficient maintenance of the services for which it is responsible, it is essential at the same time to have some controlling committee which will consider the aggregate effect of all the committees' recommendations on the finances of the local authority. It is perhaps unavoidable that each committee should become to a certain extent obsessed with the importance of developing the particular service under its control, and the duty of co-ordinating conflicting points of view, whilst as a last resort that of the council as a whole, should, so far as budgeting is concerned, be undertaken by a strongly constituted controlling committee, usually the finance committee. It is essential that this committee should have

(*l*) 11 Statutes 1230.

(*m*) 26 Statutes 352.

(*n*) *Ibid.*, 405.

the full confidence of the council, and have power, not necessarily to veto expenditure, but to recommend reductions where it appears that expenditure in any direction should be curtailed (o). It is of interest to note in this connection that the Haldane committee in its report of 1918 said :

“ On the whole, experience seems to show that the interests of the taxpayers cannot be left to the spending departments ; that their interests require the careful consideration of each item of public expenditure in its relation to other items and to the available resources of the State as well as the vigilant supervision of some authority not directly concerned in the expenditure itself, and that such supervision can be most naturally and effectively exercised by the department which is responsible for raising the income required.”

This report concerned the finances of the State, but the relevancy of the paragraph quoted to the activities of local authorities is undoubted. The controlling committee should exercise a careful supervision over the estimates of each executive committee, but sometimes control commences at a still earlier stage by fixing beforehand the amount to be budgeted for, either as a whole or for each committee. This device is known as rationing and is dealt with in more detail under that sub-heading. [501]

The use of the estimates as a measure of control involves a sound plan of organisation with clearly defined delegated responsibilities, which will ensure an ordered procedure with adequate supervision. Thus, the functions of each committee should be clearly defined so that it is clear to all members of the council and officials on what plan the work of the council as a whole is to be carried out. The activities of each committee which result in income and expenditure, whether on revenue or capital account, should be covered by regulations which ensure detailed consideration from all aspects before final approval by the council. The regulations should provide that any recommendation by a spending committee, involving additional expenditure or a reduction of income should stand referred to the finance committee, who would report to the council upon the financial aspect. The council decides the matter only after consideration of the report of the finance committee. The preparation of the rate estimates can conform to this regulation, the finance committee, in addition, computing the necessary rate required. It may be advisable, however, in this case, for the regulations to provide for the finance committee to refer back all items which it does not approve with a view to amendment by the executive committee, so that the finance committee's recommendations to the council as to estimates and rate to be levied may be substantially agreed.

The local authority's budget is a forecast of future income and expenditure, and in the same way that industry plans its works and sales organisations with a view to economical and profitable working, so should the local authority, as far as possible, plan its work so as to ensure that its estimates comply with the policy of the council. That is to say the planning of work should proceed hand in hand with the estimates of income and expenditure, so that no operations shall be decided upon without clear knowledge of their financial effect. In

(o) Under L.G.A., 1933, s. 86 (2) ; 26 Statutes 353, the finance committee of a county council may veto expenditure exceeding £50 by refusing to present an estimate to the council.

the case of some services the council is not in a position fully to control the income and expenditure, as where a minimum standard is insisted upon by the Government, or where the main items of expenditure are fixed by a central department, *e.g.* police pay and teachers' salaries. A continuous review of activities, is, nevertheless, vital to financial control, with the object of deciding upon the necessity or otherwise of:

- (a) continuing the various services in whole or in part;
- (b) improving or extending existing services;
- (c) instituting new services;
- (d) adjusting the standard of performance to be attained.

It is seldom possible to withdraw a service when it has been started, or to reduce the standard of a service from that already established, and it is thus essential that expenditure should be looked at from all points of view before being incurred; particularly is this necessary in the case of new avenues of expenditure. Each committee's estimates should be prepared in such a form as to show, in addition to the estimate and how it is arrived at, comparative statistics for previous periods. Variations between the estimate and the current year's item should be explained. Only such new expenditure as has received the sanction of the council should be included in the estimates.

Budgetary control is not complete with the final approval of the estimates and levying of the necessary rate. It is equally important to see that the provisions in the estimates are substantially adhered to, or else the careful and scientific preparation of the estimates will be of little avail. It should therefore be the function of the chief financial officer to compile and present to executive committees and to the finance committee, statements of expenditure and income itemised in the same manner as the original estimates, and showing the progressive expenditure to date against the amount of the estimate or rate. In this connection skilful book-keeping is necessary, and adequate costing records important. Unit costs are of great assistance and frequently enable a wrong impression to be avoided in examining the progressive expenditure to date against the amount of the rate estimates. The above comparative statements are usually presented quarterly since it is desirable that they should be based on balanced accounts, and it is difficult in many cases to prepare a statement of an adequate nature at shorter intervals. The statement must be based on income and expenditure if it is to provide an accurate comparison, and must consequently include accrued proportions of both income and expenditure even though not actually received or paid. Statements based on receipts and payments may be definitely misleading to the committee to which they are submitted.

Capital expenditure should also be made the subject of progressive statements to committee, possibly at shorter intervals than those dealing with revenue. Each capital scheme should be dealt with as a separate entity, and the statement should show actual expenditure against estimate, in the greatest possible detail. It is then possible to observe any departures from the terms of the original estimates submitted to the council and to the appropriate Government department on application for loan sanction, whilst such statements are particularly useful where it becomes necessary to apply for further sanction, or to make calculations for Government grants. [502]

Rate Stabilisation (p).—One of the results of an ideal system of

budgetary control should be stability in the calls on the ratepayers. A financial system which results in the levying of a comparatively low rate in one year and a high rate in the following year probably proves a greater hindrance to industry than a stable levy which is moderately high.

The figure at which a rate is to be stabilised is a matter calling for extreme care and expert advice, coupled with accurate and reliable statistics. Each authority will be guided by the particular circumstances of its area, and the detailed investigation and decision will usually be referred to the finance committee. It would be necessary to have regard, on the one hand, to the views of the various spending committees and their desire to maintain or improve the services under their control, and on the other to the ability to pay of the ratepayers in the area. Conflicting views will often be met with, for while the spending committee is usually out to develop its service to the utmost possible extent, the ratepayer, as a rule, desires a minimum rate levy. It should, however, be possible, by scientific planning to arrive at a rate levy which can be maintained for a period of years, the usual method being to make an estimate of a "standard" year's expenditure on the basis of the actual figure of the preceding year or an average for a period of years. The "standard" estimates are then amended, as appears necessary having regard to known future commitments, and adopted as the basis for forthcoming rating periods. In order to keep the actual expenditure in conformity with the estimate it is more than ever necessary to ensure that only items estimated for are actually expended, or otherwise the stability of the rate will be endangered.

There are, however, several matters which stand in the way of a system of complete rate stabilisation, although none appears to be insurmountable. For example, there does not appear to be any legal authority to fix a rate for a period of years, and the personnel of the council may change, resulting, possibly, in a change of policy. This difficulty, however, is not generally of great importance in practice, owing to the fact that in the majority of cases only one-third of the members retire each year, whilst in county and borough councils there is the further stabilising influence of the aldermen who hold office for a period of six years. A further difficulty is created by legislation placing new duties and responsibilities on local authorities. Such duties may, and often do, involve the authority in expenditure both of a revenue and capital nature, which may entirely upset any programme of stabilisation. In such cases, where sufficient economies cannot be made in other directions as an offset, it may be necessary to re-calculate the rate, and arrive at a new stabilised figure. Further, where precepting authorities have not arrived at stabilisation of their demands another element of disturbance is imported. A stabilised rate which includes profits of trading undertakings taken to the relief of rates is subject to the fluctuations of that component though these fluctuations are to some extent under the authority's own control.

It is essential in a scheme of rate stabilisation to have complete co-operation between the executive committees and the finance committee, reference to which has already been made. It is possible, given this, for a stable rate to be obtained by finance committee action and co-ordination alone, but in the generality of cases it will probably be necessary to adopt a system of rate rationing together with the process of rationalisation referred to later. [503]

Rate Rationing.—Rate rationing means the allocation of the proceeds of a fixed rate or a fixed proportion of the proceeds of a total rate,

to the various committees or departments of the authority, in accordance with the amount available and required. It follows on the lines of a stabilisation scheme as outlined above, but is much more definite in its operation, since it proceeds along the line of allotting a fixed amount of rate income to each particular committee, the latter then having to arrange its activities so as to incur only such expenditure as will be covered by the fixed amount.

Such a system should not be adopted unless it is the considered policy of the authority to continue the scheme for a period of years. As mentioned above, the adoption of a rationed rate has no legal authority, since the council has no power to bind its successors, and in addition, it is the duty of each authority to make and levy a sufficient rate (*vide* p. 267, *ante*). The personnel of a local authority, however, does not vary to any considerable extent over a period of three or five years, and consequently any substantial change of policy can generally be avoided for such a period. The other difficulty—that of raising a sufficient rate—can be overcome by careful estimating over a period of years so that the “fixed” rate is not unduly low, and will provide sufficient revenue to meet known requirements during the period, together with an amount calculated to cover expenditure as far as possible on all probable future developments. It is found in many cases that increased expenditure due to the development of services can be covered substantially by the increased produce of the rate which follows from an increasing rateable value.

The most important point in such a scheme, however, is the amount of the rate, and the determination of this is a matter of some difficulty. As already mentioned, much can be done by careful and scientific estimating, but this alone is not sufficient, particularly when it is remembered that such a scheme is adopted almost invariably with the object of reducing, as well as stabilising, the rate levy. Of the many considerations affecting the issue, two are paramount, *viz.* :

- (1) What rate is reasonably necessary for the efficient operation of the council's undertakings ; and
- (2) What rate in the pound can the ratepayer afford to pay ?

Account will also have to be taken of, *inter alia* :

- (a) the estimated increase or decrease in the produce of the rates ;
- (b) the expiration of any differential rate allowed to part of a borough or urban district ;
- (c) variations in the rates of interest on loans.

The second factor, *i.e.* what the ratepayer can afford, must necessarily be of a theoretical nature. Consideration must be given to the state of industry and trade in the locality, the extent of unemployment, rates of wages, movement of population, and in such places as health resorts, whether a “good season” is probable. It is interesting to note in this connection that an attempt has been made in one borough to test the rating capacity, and in addition to the above factors, such matters as the following were taken into account for a series of years : the amount of unemployment pay, the number of wireless and other licences issued, national savings certificates issued, number of telephone calls made and letters posted weekly, local bank clearances, and rate-payers' and consumers' discounts allowed by the authority. Although, possibly, the exact extent of rateable capacity cannot be ascertained

even by detailed examination of such matters, the above description illustrates the variety of considerations to be borne in mind. [504]

Practice varies in the matter of apportioning the rate between the committees, but the usual method is to allocate a specific sum of money to each, while the finance committee will usually provide for a sufficient margin to be available from the rate in order to make a supplementary allowance to any particular service which may definitely require it. A committee which is limited to a maximum amount of expenditure is usually faced with the task of making reductions, and will eliminate comparatively unimportant works from its programme in order to provide for its essential services. A rate rationing scheme, in addition, often has a salutary effect upon departmental officers who are obliged to effect every possible economy and create efficient organisation. Rationing may be used to provide departmental autonomy coupled with effective means of control.

There are, however, the following disadvantages attaching to such a scheme :

- (1) *Efficiency of Service*.—Rationing might seriously affect the general well-being of the inhabitants, where it involves the restriction of services, such as that of public health, preventing their normal expansion and curtailing the inauguration of new services.
- (2) *Increasing Estimates and Expenditure*.—The knowledge that their estimates are liable to be reduced may result in committees submitting inflated estimates so as to obtain a larger allocation. In addition, in cases where reductions can be effected in actual expenditure, committees may be induced to spend to the limit of their estimates in order that their allocation will not be reduced for the succeeding year.
- (3) *Exceptional and Uncontrollable Expenditure*.—The definite commitment to a scheme of rationing may seriously embarrass an authority when the urgent need for some extra item of expenditure arises, and the whole plan may be thereby placed in jeopardy. In many such cases the authority has no option but to undertake the expenditure, as in the case of new duties provided for by Parliamentary legislation, lawsuits, and extra demands from precepting authorities. [505]

Rationalisation.—A feature of post-war industry has been the introduction of rationalisation schemes, particularly in the case of large undertakings. The term may be defined as meaning "orderliness," and to rationalise would then be "to reduce to a state of orderliness." The idea is observed in advanced form in the amalgamation of the British railways into the four large groups, and of many of the banking institutions into the five large joint stock banks now operating. Its application, however, is not restricted merely to large industrial concerns, for the basic principles can be applied in the majority of cases, in abandoning uneconomic activities, in introducing meticulous organisation, and, generally speaking, in spreading the effect of acute short-term influences over a conveniently longer period so as to neutralise any disturbing effects. [506]

Rationalisation can be applied also to the affairs of a local authority and would undoubtedly be of value in framing a system of budgetary control. The following are representative of the matters which might be dealt with under this heading :

- (1) *Road Works*.—Rationalisation would imply the smoothing out of works of this nature, so that instead of unequal periods of intense activity on resurfacing, improvement, etc., of roads, the work would be planned several years ahead, with the object of performing an equal proportion each year. Similar remarks would apply to such matters as the extension of sewers, gas, water, electricity mains, etc. [507]
- (2) *Capital Expenditure*.—One object here to be attained is over a series of years to create a correspondence between the amounts of new capital expenditure and loans redeemed. It might also be provided that each year a certain amount of capital expenditure, especially on purposes for which a short-term loan would alone be allowed by the sanctioning Government department, should be met from revenue, with the object of obviating the more costly method of financing by a loan. Again, where the rate will allow, the policy might be to devote a fixed amount yearly in accelerating the repayment of loans. [508]
- (3) *Centralisation*.—Investigation may reveal the possibility of a more economical organisation of the employees. For example, it may be possible to set up a separate Works Department, appropriately staffed so as to perform all repairs, painting, erections, etc., necessary to all corporate property: A separate repair section attached to each department would then be no longer required, or where each work had previously been placed with outside firms, the introduction of such a department might result in a substantial saving in the cost of this work. Other matters which might be dealt with under this heading are the merging of the meter fixing and reading staffs attached to gas, water and electricity works, coupled with a scheme of continuous reading of meters, the centralisation of accounting and audit control in the chief financial officer's department, and a centralised department to deal with persons in receipt of relief in whatever manner disbursed. [509]

The list is, of course, by no means exhaustive, but the adoption of the main principles of rationalisation, coupled with the necessary detailed research into the organisation of the authority's work would provide a basic stabilising influence which would greatly assist in attaining the objective of an equable rate level. [510]

The Revenue Budget.—In order to obtain comparative data from time to time it is essential to decide on the detailed headings under which expenditure should be estimated, and the ledger headings and sub-headings should follow those in the estimates. In many cases, once fixed, the expenditure headings are numbered, and each item is thenceforward known by its vote number. Assuming annual estimates to be in operation, the chief financial officer would prepare skeleton forms of estimate, in January, showing the estimate for the current year, actual expenditure to the end of the previous December taken from balanced accounts, and including blank columns for approximate actual expenditure for the current year, and for the estimate of the succeeding year. Items such as loan charges, rates, taxes, etc., would be completed throughout by the chief financial officer, and the forms would then be remitted to the heads of executive departments for completion in time for return to the financial officer and submission

to committee in February. In practice it is probable that a conference between the financial officer, executive officer and chairman of committee would then be held to decide finally on the figures to be inserted in the estimates.

The budget should not be utilised as a means of obtaining approval to new expenditure in the way of new services or extensions to existing services, and consequently only such items as have already been considered and approved by the council should be included. In some cases, however, the approval of new expenditure in one direction will be the cause of still further increase, *e.g.* extensions of offices, libraries, etc., will entail increased expenditure on lighting, heating, cleaning, etc., although this consequential expenditure should have been considered at the time the capital expenditure was approved. When approved by the executive committee, the completed estimates would be referred to the finance committee who would then be responsible for a detailed survey of all the estimates from every aspect, so as to arrive at the amount necessary from the rate. As described *ante*, this procedure would be substantially reversed where a rate rationing scheme was in operation.

The chief financial officer can prove of great assistance to all committees during this period. He should attend all meetings and advise on the effects of the estimates, bearing in mind the policy adopted by the council in regard to its finances. In this way he will be enabled also to report fully to the finance committee on the salient points of the estimates as a whole, directing particular attention to new and increased expenditure. His intimate knowledge of the circumstances in which the latter has been included will be of particular value where the finance committee are faced with the task of making cuts in the requirements of committees. Simultaneously with the submission of the detailed estimates to the finance committee, he should submit also a total statement showing the rate levy necessary to meet the expenditure, together with approximate general rate fund accounts for the current year and later financial years. In addition he will usually be called upon to report as to the tendency of the rateable value and the produce of a penny rate to alter, and as to the desirability of increasing or reducing balances.

The estimates of the authority will not consist entirely of expenditure, but will include a substantial amount of income from charges for various works and materials, Government grants and miscellaneous revenues. Such items should be estimated for specifically, and set off against expenditure, which should always be shown gross, apart from pure *contra* items, in order to arrive at the amount required from the rate. Charges made for services rendered, should, in general, be such as will at least cover the cost to the authority, and services which are unremunerative should be constantly reviewed with a view to increasing the charge so as to prevent the loss falling on the general body of rate-payers. Charges in connection with trading undertakings such as for tramways, electricity and gas will have to be carefully considered in conjunction with the technical official responsible; but here again, the financial officer can do much by accurate costing and suitable statistics to enable an intelligent estimate to be made.

It is customary among some authorities to budget for a more or less substantial balance, in order to cover contingencies, or provide for unforeseen expenditure. In other cases each committee includes in its estimates "margins" or reserves, secret or otherwise, which,

though small in amount, account for a large sum in the aggregate. Such practices are clearly undesirable, since the accuracy of the estimates is essential to proper budgetary control. If it is necessary to provide a margin for contingencies, this should be done by the finance committee, in a single item, available for all departments.

It necessarily follows from what has been said above, that at times there will be divergences of opinion between the finance and spending committees, particularly where estimated items of expenditure have been referred back to the latter with a view to reduction or abandonment. Such differences can often be overcome by conferences between the committees or consultations between the respective chairmen and officials. Where, however, reconciliation in this manner is impossible, then the matter must of necessity be brought before the council whose decision, after an explanation of the differing views, would, of course, be final.

When the finance committee has completed its work of examination and collation of the estimates, its report thereon must be submitted to the council in March so as to allow of the necessary resolution being taken to levy the rate. Although not legally essential, it is extremely desirable that the above procedure should be concluded and the rate made a sufficient time in advance of the first day of April, so as to avoid delay in the issue of the demand notes. When a new valuation list is to take effect from April 1, the rate cannot be levied earlier than that date. The finance committee's report is usually submitted to the council in the form of the chairman's budget speech, wherein he will draw attention to controversial points as between the spending and finance committees, new and important items of expenditure and the financial effects of particular policies. The speech is of great importance, since opportunity can be taken to stress the value of proper financial control and the impartial and well-defined method in which this has been applied by the finance committee, at the same time reassuring the ratepayers that the question of economy is receiving adequate attention.

[511]

Supplementary Estimates.—The budget, once made, should be strictly adhered to by all departments. The committees should be supplied with periodical comparative statements by the financial officer, and there should be a report to the finance committee in cases where expenditure is exceeding or is likely to exceed the estimate. If this control is not exercised, it becomes possible for expenditure in excess of, or not contemplated by, the estimates, to be incurred, with the consequent submission to the council of supplementary estimates, and the virtual abandonment of the original budget plan.

Supplementary estimates, however, may be and often are, of such urgency as to demand consideration and action. Similar procedure should obtain as in the case of the annual estimates, the estimate being first submitted to the finance committee, and in practice the whole matter would probably be the subject of a conference between the respective chairmen and officials. If approved, it devolves on the finance committee to decide how the money is to be raised, and the policy is sometimes adopted of requiring the particular executive committee to re-examine its original estimates with a view to pointing out items on which savings can be effected so as to finance the supplementary items. In these circumstances the finance committee, being in a position to take a detached view of the whole of the authority's finances,

may be able to suggest savings in other directions as an offset against the new expenditure. In any case the finance committee will have to report for or against the proposed spending, and in the former case, as to ways and means.

Spending committees will occasionally submit a plea for a supplementary estimate, at the same time indicating an equivalent saving on other votes. Unless the supplementary estimate is urgent and unavoidable, such a course would appear to be wrong in principle. Where, however, the finance committee decides to sanction this course, it should be seen that the savings are genuine and are the result of careful and economical administration. Fortuitous savings or "windfalls," should in all cases be appropriated to a central contingencies fund, under the control of the finance committee, and out of which such supplementary estimates as are allowed might be financed. In a similar manner it may be found that the actual expenditure may be less than the estimate for the year, and the suggestion may be advanced that such savings should be placed at the disposal of the particular committee disclosing the saving. This also is contrary to principle, since expenditure may thereby be incurred without the sanction of the finance committee and would tend to create an attitude of independence of the budget. Such a surplus may be more properly credited to the central contingencies fund, as a reserve against unforeseen expenditure or utilised in the reduction of the succeeding rate. [512]

The Capital Budget.—It has long been recognised that it is insufficient to frame a budget which takes cognisance of revenue expenditure only, without at the same time adopting some ordered policy with regard to capital expenditure. The connection between the two is, of course, very close, since practically all capital expenditure must at some time become chargeable to revenue either in the form of specific revenue contributions to capital, or as loan charges. The annual amount of loan charges may appear small in comparison with the capital expenditure which it covers, but it should be remembered that where a considerable proportion of the revenue expenditure of an authority consists of loan charges, the ordinary maintenance and development of its services may be seriously hampered through lack of money. Thus, in the year 1930—31, out of a total revenue expenditure by local authorities of £432 millions, loan charges amounted to £93 millions, or rather more than one-fifth (*vide* pp. 153, 154 of M. of H. Report for 1932—33). [513]

The necessity of budgeting for capital expenditure was referred to in the M. of H. Report for 1929—30 as follows :

"The Minister has emphasised on previous occasions the importance of systematic budgeting for capital expenditure. Progress has been made by local authorities in this direction in recent years, but much more is required. There should be as systematic and considered budgeting for capital as for revenue expenditure. The capital requirements for the year should be thoroughly examined, brought before the council as a whole in a comprehensive statement, and approved by them with any amendments deemed desirable. There should be a definite rule that capital expenditure outside the approved programme will not be passed unless convincing exceptional circumstances are shown, and a form of procedure should be adopted that will ensure that the rule is strictly applied.

"It is not enough to deal as a whole with the capital expenditure of each year, great as is this improvement, compared with the primitive system of dealing with each item as it arises. A still longer survey is required; when each year's capital budget is considered, there should be considered at the same time the prospective capital expenditure for at least four years ahead, so that on each occasion there will be at least a five years' survey of probable capital commitments. Of course, it will not usually be possible to foretell exactly what will be the capital needs of the next four years, but that is no excuse for not making as accurate a forecast as possible, and the need for looking ahead will be healthy discipline for, and will add to the efficiency of, each committee and each department.

"It is only by a thorough comprehensive survey of this kind that local authorities can hope to keep a proper check on capital commitments, can make sure that projects are adopted in proper order of necessity and advantage and can correlate expenditure and means. Every local authority would do well to adopt the practice without delay, and to make certain that it is strictly observed."

The matter was also referred to in somewhat similar terms by the Committee on Local Expenditure of 1932, and there seems no room for doubt that a proper system of budgetary control will have to take careful account of this subject if the best results are to be obtained. [514]

The starting point of the capital budget will consist of the preparation of statements showing :

- (1) The yearly loan charges on existing loans.
- (2) The capital commitments at present entered into by the council, the loan charges thereon and the years in which they become payable.
- (3) The yearly loan charges for the next ten or fifteen years on the basis of the above, and the years in which some will fall out in the ordinary course.
- (4) A forecast over the succeeding five years of the capital schemes to be undertaken by the council, together with an estimate of the annual loan charges and other expenses involved, and the income which will be earned by the assets.

The co-operation of the executive committees and officials is required to enable the financial officer to compile these statements, and once prepared the information should be submitted to the finance committee suitably tabulated. It can then be seen what probable loan charges will have to be provided over a considerable period in the future, together with relief due to loans redeemed. The information will prove of particular value in considering proposals for new capital expenditure, and as new schemes are approved the statements should be brought up to date by the inclusion of the new figures.

The statements should not, however, be utilised in a purely negative manner, but on the basis of the information contained therein, a definite capital programme should be prepared to cover (say) the succeeding five years, prescribing the works which can be undertaken without financial inconvenience, and placing them in order of priority. It would probably be necessary for the finance committee to confer with the various executive committees, in order, if possible, to arrive at

agreement, but in any case the plan would have to be submitted to and approved by the council, with or without amendment. There is patently much scope for applying the principles of rationalisation to such a plan, in that instead of undertaking large or small schemes piecemeal, the work could be spread out evenly over the period of the plan, and if necessary, so that the yearly revenue charge therefor is less than the rate at which loans are being repaid, thus resulting in a gradual decline of aggregate indebtedness.

It is important to have regard also to the revenue expenditure incurred by capital schemes in addition to the loan charges involved. Schemes such as the construction of a new library, or acquisition of a park, would involve the authority in increased charges for maintenance. The construction of a large housing estate may involve further capital expenditure in the construction of roads and schools which in turn would result in further revenue expenditure on maintenance. Towards this, there would be certain items of income, including in some cases, Government grants, whilst certain classes of capital expenditure may be expected to prove remunerative, as for example, extensions of trading undertakings. It is imperative, therefore, that such matters should be carefully investigated by the executive and finance committees, and appropriate statistics prepared and submitted by the chief official concerned and financial officer. [515]

The spending committee are not concerned with the method of financing capital expenditure, this being entirely in the discretion of the finance committee, subject to the approval of the council. Not all capital expenditure will be defrayed out of borrowed money, and it may be desirable to provide for a partial financing of such expenditure by means of contributions from revenue, or the creation of a capital fund for this purpose out of capital receipts, such as the sale of land, and the proceeds annually of a fixed rate levied for this purpose (see title *Borrowing*, *ante*, at p. 221). [516]

Regulations for the control of capital expenditure are as important as those in respect of revenue, and should follow the same general lines.

The object of the regulations is to secure :

- (1) Prior approval by the authority of all capital expenditure after consideration of a report by the finance committee on the financial aspect.
- (2) Determination of priority of capital schemes.
- (3) Reports on capital expenditure in relation to estimates and provision for supplementary estimates where necessary.
- (4) That the policy of the council in regard to the raising of loans for capital expenditure is strictly observed.

Estimates on capital account should be submitted to each committee in conjunction with the annual rate estimates. Such estimates should show the capital schemes completed, in progress, and contemplated, together with the relative loan charges involved, in detail and in total. The expenditure on loan charges included in the revenue estimates may then be referenced to the relative items in the capital section, and each committee is thus enabled to view its present and future commitments in isolation, and the effect on future revenue estimates can be gauged thereby. The finance committee should be provided with a similar statement compiled from the various committee statements, which will display the total effect of capital expenditure on the authority's finances. There is much scope for the application of

statistical method in the preparation of such statements, and the financial officer can be of great assistance by submitting such statistics at regular periods, and at any other time when the circumstances seem to warrant such a course. [517]

BUILDING

	PAGE		PAGE
INTRODUCTORY - - -	281	BACK-TO-BACK HOUSES - -	286
CONTROL BY BYE-LAWS - -	282	DANGEROUS STRUCTURES - -	287
Building Bye-laws - -	282	Notices to be Served - -	287
Exemption from Bye-laws - -	284	SAFETY OF THE PUBLIC - -	287
Enforcement of Bye-laws - -	284	Public Buildings - -	287
Height of Buildings - -	284	Precautions during Building - -	288
Basements Below Ground - -	285	Operations - -	289
Classification of Buildings - -	285	Platforms and Stands - -	289
Factories - - -	285	SANITARY CONVENIENCES - -	289
BUILDING LINES - - -	286	Generally - - -	289
CONTROL OVER APPEARANCE OR DESIGN - - -	286	Factories - - -	289
		LONDON - - -	289

See also titles :

AMENITIES ;
 ASHPITS ;
 BACK-TO-BACK HOUSES ;
 BRIDGES OVER STREETS ;
 BUILDING AND IMPROVEMENT LINES ;
 BUILDING BYE-LAWS ;
 CELLAR DWELLINGS ;
 CESSPOOLS ;
 CHIMNEYS ;
 CINEMATOGRAPHS ;
 CLOSETS, CONVERSION OF ;
 CONTROL OF ELEVATION ;
 DANGEROUS BUILDINGS ;
 DENSITY OF BUILDINGS ;
 DRAINS ;
 FACTORIES AND WORKSHOPS ;
 FIRE PROTECTION ;

FLATS ;
 HOUSING ;
 INSANITARY HOUSES ;
 LONDON BUILDING ;
 OVERCROWDING ;
 PLANS ;
 PROJECTIONS OVER HIGHWAYS ;
 RECONDITIONING OF HOUSES ;
 ROAD MAKING AND IMPROVEMENT ;
 SAFETY PROVISIONS OF BUILDINGS AND STANDS ;
 SANITARY CONVENIENCES ;
 SLUM CLEARANCE ;
 SMOKE ABATEMENT ;
 TENTS, SHEDS AND VANS ;
 TOWN AND COUNTRY PLANNING ;
 WATER SUPPLY.

NOTE.—This article gives a conspectus of functions of a local authority with respect to building. For detailed information reference should be made to the appropriate one of the titles listed above.

The regulation of building operations, both in the interest of the inmates of buildings and of passengers in the street is the subject of numerous enactments administered by local authorities with the M. of H. as the central authority, and as respects factories the Home Secretary. This control is not only applied to the more ambitious types of building, but extends over those of the smallest dimensions.

A building need not be of a permanent character to bring it under the jurisdiction of a local authority, and a caravan (a), if occupied in one situation with comparative constancy, may be subject to control not only for the purposes of guarding against insanitary conditions, but also

(a) *Mitcham Urban Council v. Seale* (1933), 97 J. P. 295, where application made for a declaration that caravans and converted tramcars and omnibuses which were being used as dwellings were within P.H.A. Amendment Act, 1907, s. 27 ; 13 Statutes 920. Cf. *Rockwell v. Wade* (1924), 23 L. G. R. 174 ; 38 Digest 187, 260 ; and *Keeling v. Wirral R.D.C.* (1925), 23 L. G. R. 201 ; 38 Digest 188, 261.

for the protection of the amenities of the district. Before any person erects or sets up a temporary building (*b*) he must apply for permission to do so to the council of the borough or district, who may make any condition which they deem proper with regard to sanitary arrangements, ingress and egress, protection against fire and the period during which the building shall be allowed to stand. [518]

CONTROL BY BYE-LAWS

Building Bye-laws.—Outside London, borough councils and district councils exercise control over building operations mainly by means of bye-laws confirmed by the M. of H. and made under sect. 157 of the P.H.A., 1875 (*c*), and various enactments extending the scope of that section. As originally enacted, sect. 157 applied only to boroughs and urban districts, but was extended to all rural districts by the R.D.Cs. (Urban Powers) Order, 1931 (*d*), of the M. of H. Apart from bye-laws regulating new streets, the section in question allows a council to make bye-laws as to :

- (1) the structure of walls, foundations, roofs and chimneys of new buildings, for securing stability and the prevention of fires, and for purposes of health ;
- (2) the sufficiency of the space about buildings to secure a free circulation of air, and as to the ventilation of buildings ; and as to the drainage of buildings, as to closets, ashpits and cesspools in connection with buildings, and to the closing of buildings, or parts of buildings, unfit for human habitation, and to the prohibition of their use for habitation. [519]

It will be noticed that the bye-laws mentioned in para. (1) above are limited to the structure of walls, etc., of *new* buildings, while the bye-laws mentioned in para. (2) need not be limited to new buildings, but obviously should apply to existing buildings only where some sort of alterations of the building, or of its sanitary conveniences, is proposed. But this limitation would not of course extend to bye-laws as to the closing of buildings for habitation. In practice, however, bye-laws of this last type are not made, and action is taken under the Housing Acts, 1925 and 1930 (*e*). [520]

On the other hand, various building operations are, by sect. 159 of the P.H.A., 1875 (*f*), to be considered, for the purposes of that Act, the erection of a new building. (1) The re-erecting of any building pulled down to or below the ground floor, or of any frame building, of which only the framework is left, down to the ground floor, or (2) the conversion into a dwelling-house of any building not originally constructed for human habitation, or the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only, are all to be considered as the erection of a new building.

This provision is supplemented by sect. 23 of the P.H.A. Amendment Act, 1907 (*g*), where that section has been put in force in any borough or district by an order of the M. of H. The section not only re-defines with greater precision some of the operations described in sect. 159 of the Act of 1875, but also requires additions to buildings (but so

(*b*) P.H.A. Amendment Act, 1907, s. 27 ; 13 Statutes 921, in force in boroughs and districts to which it has been applied by order.

(*c*) 13 Statutes 689.

(*d*) S.R. & O., 1931, No. 580 ; 24 Statutes 262.

(*e*) 13 Statutes 1001 ; 23 Statutes 396.

(*f*) 13 Statutes 691.

(*g*) *Ibid.*, 919.

far as regards the additions only) and the roofing or covering over of an open space between walls or buildings, to be treated as the erection of a new building for the purposes of the Act of 1907, the P.H.A. and of any bye-laws made thereunder. [521]

An important amendment of the restriction to new buildings of the bye-laws as to the structure of walls, etc., is made wherever sub-sect. (4) of sect. 23 of the P.H.A. Amendment Act, 1890 (*h*), is in force. That sub-section allows the council to make bye-laws to prevent buildings which have been erected in accordance with bye-laws from being altered in such a way, that if so constructed, they would have contravened the bye-laws. Thus where structural alterations are being made in existing buildings, the bye-laws regulating the structure of walls, foundations, roofs and chimneys of new buildings will govern the alterations so made. [522]

Sub-sect. (1) of sect. 23 of the P.H.A. Amendment Act, 1890 (*i*), also extended the purposes for which bye-laws as to buildings may be made under sect. 157 of the Act of 1875 (*k*), so as to authorise bye-laws as to the keeping of water-closets supplied with sufficient water for flushing, the structure of floors, hearths and staircases, and the height of rooms intended for human habitation and the paving of yards and open spaces in connection with dwelling-houses. [523]

Another limitation on the application of bye-laws to existing buildings is imposed by the proviso to sect. 157 (*l*) of the Act of 1875. The effect of the proviso may be summarised as forbidding any bye-law to affect any building (1) in any place which on August 11, 1875, formed part of an urban sanitary district erected before the place was included in such a district, or (2) in any place which on August 11, 1875, was not included in an urban sanitary district, erected before the inclusion of the place in an urban sanitary district, or before sect. 157 was put in force in the place by an order of the Local Government Board or M. of H. [524]

These limitations are modified wherever sub-sect. (2) of sect. 23 of the P.H.A. Amendment Act, 1890, is in force (*m*), for that sub-section allows bye-laws under sect. 157 of the Act of 1875, as extended by sub-sect. (1) of sect. 23 of the Act of 1890, with regard to the drainage of buildings, and to closets, ashpits and cesspools in connection with buildings, and the keeping of waterclosets supplied with sufficient water for flushing, to be made so as to affect buildings erected before the times mentioned in the proviso to sect. 157 already summarised. [525]

The requirements usually included in building bye-laws made by

(*h*) 13 Statutes 834. This sub-section is in force only where Part III. of the Act has been adopted by the borough council or district council. In a rural district, the sub-section may also be put in force by an order under s. 5 of the Act, but was not extended to all rural districts by the R.D.Cs. (Urban Powers) Order, 1931 (see *infra*, note (*i*)).

(*i*) 13 Statutes 833. In boroughs and urban districts, s. 23 is in force only where Part III. of the Act has been adopted, but sub-ss. (1) and (2) were applied to all rural districts by the R.D.Cs. (Urban Powers) Order, 1931 (S.R. & O., 1931, No. 580); 24 Statutes 262. The Order by Art. 3 puts R.D.Cs. into the same position as U.D.Cs. with regard to these sub-sections, but although it would be necessary for a U.D.C. to adopt the sub-sections it does not appear to be necessary for a R.D.C. to do so since ss. 2 and 3 of the Act of 1890 which relate to adoption do not enable a R.D.C. to adopt these sub-sections and the Order itself implies (*cf.* Art. 7) that no adoption is necessary.

(*k*) 13 Statutes 689.

(*l*) *Ibid.*, 690.

(*m*) Sub-s. (2) of s. 23 of the P.H.A. Amendment Act, 1890, is put in force in the same manner as sub-s. (1) of that section. As to sub-s. (1), see footnote (*i*).

local authorities, as exemplified by the model series of bye-laws drawn up by the M. of H. and the course to be adopted in submitting plans of buildings for the approval of the local authority are referred to in the titles **BUILDING BYE-LAWS AND PLANS.** [526]

Exemption from Bye-laws.—Buildings belonging to a railway company and used for the purposes of the railway under any Act of Parliament are exempted from bye-laws made under sect. 157 of the Act of 1875 (*n*) by the terms of the section, and no doubt this exemption extends to bye-laws made under any enactment extending that section to cover bye-laws for additional purposes. Where, however, sect. 33 of the P.H.A. Amendment Act, 1907 (*o*), has been put in force in a borough or district by an order of the M. of H. this exemption is superseded by that section, which exempts from bye-laws made under sect. 157 of the Act of 1875, as originally enacted or as extended by Part. II. of the Act of 1907, buildings (other than dwelling-houses) belonging to railway companies, or companies or other public bodies authorised to construct, etc., harbours, piers or docks and owners of a canal or inland navigation, if the building is used as a part of or in connection with the undertaking. [527]

Buildings constructed by a county council or local authority in accordance with plans approved by the M. of A. & F. under the Small Holdings and Allotments Acts, 1908 and 1910 (*p*), or any Act amending the same, are exempted from building bye-laws by sect. 24 of the Housing, Town Planning, etc., Act, 1919 (*q*), as also are school premises, the plans of which have been approved by the Board of Education (see sect. 166 of the Education Act, 1921) (*r*).

In addition, a series of building bye-laws usually exempts from their operation various other classes of buildings, the plans of which are approved by a Government department, such as prisons, mental hospitals or hospitals for infectious patients. [528]

Enforcement of Bye-laws.—The observance of building bye-laws is secured by the provision in sect. 157 of the P.H.A., 1875 (*n*), authorising bye-laws to provide for the giving of notices, as to the deposit of plans and sections by persons intending to construct buildings, as to the inspection of works, and as to the power of the council to remove, alter or pull down any work begun or done in contravention of bye-laws. An additional power of pulling down or removing work, not in conformity with the bye-laws, is conferred by sect. 158 of the P.H.A., 1875 (*s*), if the work was commenced after notice of disapproval of the plan was sent to the builder, or without awaiting the expiration of the month allowed by the section for the consideration by the council of plans and descriptions of works submitted to them. It will be seen that a builder, who commences work on a building, without awaiting either the approval by the council of the plans or the expiration of a month from their deposit, does so at the risk of being compelled to alter any work not in accordance with the bye-laws. [529]

Height of Buildings.—In the larger cities it has been found necessary to restrict the height of buildings; in some cases to ensure safety from fire because hydrants can only propel water to a given height depending

(*n*) 13 Statutes 690.

(*o*) *Ibid.*, 923.

(*p*) 1 Statutes 257. The Act of 1910 was repealed by the Agriculture Act, 1920.

(*q*) 13 Statutes 959.

(*r*) 7 Statutes 211.

(*s*) 13 Statutes 690. This section was extended to all rural districts by the R.D.Cs. (Urban Powers) Order, 1931 (S.R. & O., 1931, No. 580); 24 Statutes 262.

on the pressure of the main. In London the normal height is 80 ft. plus two storeys in the roof, subject to exceptions where a building fronts on to a large open space secured to the benefit of the public (*t*) and also to the discretion of the administering authority.

The P.H.A. Amendment Act, 1907, sect. 24 (*u*), empowers a local authority to make bye-laws with respect to the height of buildings, after the section has been put in force by an order of the M. of H. [530]

Basements Below Ground.—While the height of buildings may be restricted by bye-laws to ensure proper means of escape from fire and to preserve the amenities of streets, the construction of basements for habitation is also regulated to ensure a proper means of ventilation and air circulation.

The model bye-laws, while not laying down specific regulations for basement habitable rooms, provide that a habitable room shall have a window or windows opening directly into the external air, and having an area of not less than one-tenth of the floor area, half of which window area must be made to open at the top. The model series also provides for air spaces both in front and rear of domestic buildings (*a*). [531]

Classification of Buildings.—The requirements of bye-laws affecting buildings depend in a measure on the character of the building. The model bye-laws refer to three classes of buildings, viz. (1) public buildings; (2) buildings of the warehouse class; and (3) domestic buildings. "Public building" is defined as one used as a place of public worship, hospital, public hall, etc., where persons are admitted by ticket or otherwise, or a building used or constructed for any other public purpose.

A warehouse building under the model bye-laws means a warehouse, factory, laundry, brewery or distillery.

A "domestic building" means a dwelling-house or office building, or a shop or any other building which is neither a public nor a warehouse building, and includes an office building or other outbuilding appurtenant to another building whether attached thereto or not. [532]

Factories.—The erection of a factory would be governed by the bye-laws, with respect to new buildings, in force in the borough or district, applying to buildings of the warehouse class. Sect. 15 of the Factory and Workshop Act, 1901 (*b*), also allows borough councils and district councils to make bye-laws, subject to the confirmation of the M. of H., providing for means of escape from fire in the case of any factory or workshop.

Every factory built since 1891 and every workshop built since 1895, and in either of which more than 40 persons are employed must be certified by the borough council or district council, under sect. 14 (1) of the Act of 1901 (*c*), and provided with such means of escape from fire for the workers therein, as can reasonably be required under the circumstances of the case. As respects factories built before 1891 and workshops built before 1895, employing more than 40 persons, sub-sect. (2) of sect. 14 requires the council to ascertain whether means of escape from fire for the workers are provided. If not, a notice may be served by the council on the owner, who if he demurs to the requisitions in the notice, may resort to arbitration (sect. 14 (3)). [533]

(*t*) London Building Act, 1930, s. 51; 23 Statutes 243.

(*u*) 13 Statutes 920.

(*a*) As to the meaning of the term "domestic building," see *Collins v. Greenwood* (1910), 74 J. P. 327; 38 Digest 186, 252.

(*b*) 8 Statutes 527.

(*c*) *Ibid.*, 525.

BUILDING LINES

As to the control exercisable by a local authority over the line of buildings in highways, see title BUILDING AND IMPROVEMENT LINES. [534]

CONTROL OVER APPEARANCE OR DESIGN

As the external appearance of a building is a matter of taste, a local authority has, under the general law, no power to reject the specifications of a building on the ground that it would form an eyesore or be incongruous with other buildings in the street, unless such powers as are referred to later are given by a town planning scheme, or have been obtained by means of a local Act (*d*).

Although an authority has no control over aesthetics it has power to refuse to sanction elevations submitted for approval under its bye-laws when they do not conform with them as regards (1) building frontage line; (2) projections beyond building lines; (3) height; (4) proportion of window area to floor area; (5) means of escape in case of fire.

Town and country planning schemes may include provisions for regulating the design and external appearance of buildings, subject to a right of appeal (*e*). The powers cover control of materials, but only as a part of the control of design or external appearance. Taste not being a matter for dogmatism these powers will probably in the main be used to stifle outrageous designs offensive to the neighbourhood and out of keeping with local building tradition. For public buildings and important schemes the advice of the Royal Fine Art Commission is available; and on improvement or development schemes the advice of the Royal Institute of British Architects and the Council for the Preservation of Rural England could be obtained.

On the other hand, where it appears to a borough council or district council that the erection of buildings of a style of architecture in harmony with other buildings of artistic merit existing in the locality is impeded by the building bye-laws in force, the council may, with the consent of the M. of H., relax the bye-laws so as to allow the erection of the buildings, but they must be satisfied that the buildings can be erected with due regard to safety from fire and to sanitation (*f*). (See also titles AMENITIES, CONTROL OF ELEVATION and TOWN AND COUNTRY PLANNING.) [535]

BACK-TO-BACK HOUSES

The erection of back-to-back houses as working-class dwellings was made illegal by statute in 1909 (*g*), which, however, allowed exceptions where local Acts or bye-laws were in force permitting the erection of such dwellings. The construction of back-to-back houses in the earlier years of the nineteenth century was an incident of the industrial revolution, and the contrast to it as a healthy dwelling is found in the modern bye-law which requires in the rear of every dwelling

(*d*) See, e.g., s. 58 of the Oxford Corpn. Act, 1933 (23 & 24 Geo. 5, c. xxi.); s. 48 of the Norwich Corpn. Act, 1933 (23 & 24 Geo. 5, c. xxvii.); and s. 53 of the Rugby Corpn. Act, 1933 (23 & 24 Geo. 5, c. xli.). In the Oxford Act there is an appeal to a special tribunal against the rejection by the council of specifications, in the Norwich Act an appeal to petty sessions or quarter sessions, and in the Rugby Act an appeal to quarter sessions.

(*e*) Town and Country Planning Act, 1932, s. 12; 25 Statutes 485.

(*f*) Ancient Monuments Consolidation and Amendment Act, 1913, s. 18; 12 Statutes 400.

(*g*) Housing, Town Planning, etc., Act, 1909, s. 43 (repealed).

an area extending its full width and of a minimum depth varying with the height of the dwelling. Whether buildings are back-to-back houses or not is a question of fact; they are not prevented from being considered as such merely because two-thirds of one building backs on to another while one-third is separated by an air space (*h*).

The prohibition contained in the 1909 Act was re-enacted in 1925 (*i*), with an addition making void the provisions of any local statute or bye-law allowing such dwellings for the working classes and a declaration that they were to be deemed to be in a state so dangerous and injurious to health as to be unfit for human habitation (*k*); tenements containing dwelling-rooms back-to-back are, however, subject to a certificate of the M.O.H. that effective ventilation is provided (*i*).

A local authority has power to order the demolition of a house which is unfit for occupation by persons of the working classes (*l*).

And they may likewise deal with part of a building which is let for habitation as a separate tenement (*m*). [536]

DANGEROUS STRUCTURES

Notices to be Served.—Under sect. 75 of the Towns Improvement Clauses Act, 1847 (*n*), if any building or wall, or anything affixed thereon, is deemed by the surveyor of the council to be in a ruinous state and dangerous, it is to be fenced for the protection of passengers by the surveyor, and a notice given to the owner and the occupier requiring them forthwith to take down, secure or repair the structure. If no action is taken within three days, an order on the owner or occupier may be obtained from two justices requiring steps to be taken within a time to be fixed by them. On a failure to comply with the order, or if no owner or occupier can be found on whom to serve the order, the council may do such work as may be necessary, the cost to be paid by the owner of the structure.

Sect. 30 of the P.H.A. Amendment Act, 1907 (*o*), allows the adoption of a similar course, but with the omission of the necessity of a justices' order, where any building, wall, fence, steps, structure or other thing is for want of sufficient repair, protection or enclosure, dangerous to the persons lawfully using any street or public footpath. The notice requiring work to be done is to be served, under this section, on the owner, not on the owner or occupier. [537]

SAFETY OF THE PUBLIC

Public Buildings.—Upon the erection of a new public building the appropriate bye-laws must be complied with by the builder, unless the building is of a kind exempted from the bye-laws. But the means of entrance to and exit from an existing public building may be dealt with under sect. 36 of the P.H.A. Amendment Act, 1890 (see note (*p*) on next page). If Part III. of that Act has been adopted by the council

(*h*) *White v. St. Marylebone Borough Council*, [1915] 3 K. B. 249; 38 Digest 216, 507.

(*i*) Housing Act, 1925, s. 17; 13 Statutes 1012.

(*k*) The words "in a state so dangerous or injurious to health as to be" are omitted by the Housing Act, 1930, s. 63 (2), and Sched. V.; 23 Statutes 436, 442.

(*l*) *Ibid.*, s. 19; 23 Statutes 412.

(*m*) *Ibid.*, s. 20.

(*n*) 13 Statutes 554. This section is applied to boroughs and urban districts by s. 160 of the P.H.A., 1875; 13 Statutes 691.

(*o*) 13 Statutes 922. This section is in force only in a borough or district to which it has been applied by order of the M. of H.

of a borough or urban district, every building which is used as a place of public resort must, to the satisfaction of the council, be substantially constructed and supplied with ample means of ingress and egress, regard being had to the purposes for which the building is used and the number of persons likely to be assembled at any one time therein (*p*).

Churches or chapels or other places of public worship used before the date of the adoption by the council of Part III. of the Act of 1890, are exempted by the proviso to sub-sect. (6) from the section, but otherwise "place of public resort" is defined in the sub-section as meaning a building used or adapted to be used as a place of public worship (not being merely a dwelling-house so used) or as a theatre, public hall, concert-room, ball-room, lecture-room or exhibition room, or as a public place of assembly for persons admitted by tickets or payment, or used, or constructed, or adapted to be used, either ordinarily or occasionally for any other public purpose (sub-sect. (6)) (*g*). But the definition goes on to exclude from its scope a private dwelling-house, used occasionally or exceptionally, for any of the purposes already mentioned. [538]

The means of ingress and egress must be kept free and unobstructed to such an extent as the council shall require, and any officer, authorised in writing by the council, is given a power of entry to any such building (sub-sects. (2), (3)) (*r*). [539]

Precautions during Building Operations.—Provisions requiring hoards or fences, with a convenient platform and handrail to be put up, where any street or footway is obstructed or rendered inconvenient by building operations, and if necessary lighted at night, and also requiring building materials deposited in a street, or a hole made in a street, to be lighted at night will be found in sects. 80, 81 of the Towns Improvement Clauses Act, 1847 (*s*). Sect. 82 allows the recovery of a fine from any person who allows building materials, or a hole, to be allowed to remain in a street for an unnecessary time (*t*). [540]

Where Part III. of the P.H.A. Amendment Act, 1890, has been adopted by the council of a borough or urban district, sect. 34 of that Act (*u*) supersedes sect. 80 of the Act of 1847, and contains a very similar provision as to the erection and lighting of hoards and fences, extending to every person intending to build or take down any building, or to alter or repair the outward part of any building in any street or court.

The safety of hoardings erected in streets during building operations is provided for in sect. 32 of the P.H.A. Amendment Act, 1907 (*a*), which prohibits a person from using for any purpose any hoarding or similar structure, which is in, or abuts on, or adjoins any street, unless it is securely fixed to the satisfaction of the local authority. [541]

(*p*) P.H.A. Amendment Act, 1890, s. 36; 13 Statutes 838. The section may be put in force in a rural district by an order of the M. of H. under s. 5 of the Act.

(*g*) 13 Statutes 838.

(*r*) *Ibid.*

(*s*) 13 Statutes 556, 557. These sections are applied to boroughs and urban districts by s. 160 of the P.H.A., 1875; 13 Statutes 691.

(*t*) 13 Statutes 557.

(*u*) *Ibid.*, 837. This section was put in force in all rural districts by the R.D.Cs. (Urban Powers) Order, 1931 (S.R. & O., 1931, No. 580); 24 Statutes 262. (See note (*i*) on p. 283.)

(*a*) 13 Statutes 923. This section is in force only in a borough or district to which it has been applied by order of the M. of H.

Platforms and Stands.—Racecourse stands, stands for viewing processions, and other structures, may be of a permanent character, but in many cases are erections of a temporary character; the onus of securing the safety of the public on such occasions lies upon the surveyor to the council.

Sect. 37 of the P.H.A. Amendment Act, 1890 (*b*), provides that whenever large numbers of persons are likely to assemble on the occasion of any show, entertainment, public procession, open-air meeting or other like occasion, every roof and every platform, balcony or other structure for the purpose of affording sitting or standing accommodation for a number of persons shall be safely constructed or secured, to the satisfaction of the council's surveyor, under a penalty not exceeding fifty pounds (*c*). [542]

SANITARY CONVENIENCES

Generally.—It is unlawful to erect a house, or to rebuild a house pulled down to or below the ground floor, without a sufficient water-closet, earth-closet or privy and an ashpit with proper doors and coverings or an ashtub or other receptacle (*d*). A local authority has power to enforce the provision (*e*). [543]

Factories.—In factories or buildings in which both sexes are employed at one time in manufacture, trade or business, a local authority may by notice in writing require the owner or occupier to construct a sufficient number of conveniences for the separate use of each sex (*f*). [544]

LONDON

This subject, so far as it affects London, is dealt with under the title LONDON BUILDING. [545]

(*b*) 13 Statutes 839. This section is in force wherever Part III. of the Act has been adopted by a borough or district council, and may be applied to a rural district by an order of the M. of H. under s. 5 of the Act.

(*c*) As to liability for injuries resulting from defects in structure, see *Francis v. Cockrell* (1870), L. R. 5 Q. B. 501; 42 Digest 908, 49.

(*d*) P.H.A., 1875, s. 35; 13 Statutes 640; P.H.A. Amendment Act, 1890, s. 11; 13 Statutes 827.

(*e*) P.H.A., 1875, s. 36.

(*f*) *Ibid.*, s. 38, superseded by P.H.A. Amendment Act, 1890, s. 22, where this section is in force; see 13 Statutes 641, 833.

BUILDING AND IMPROVEMENT LINES

	PAGE		PAGE
INTRODUCTORY - - -	290	THE ROADS IMPROVEMENT ACT, 1925 - - -	294
BUILDING LINES - - -	291	Obstruction of View at Corners	294
On Reconstruction of Buildings	291	Prescription of Building Lines -	294
On Erection or Alteration of Buildings - - -	292	Registration as Local Land Charge - - -	295
Exemptions - - -	293	THE PUBLIC HEALTH ACT, 1925	295
Vaults and Cellars - - -	293	Prescription of Improvement Line - - -	295
		LONDON - - -	297

See also titles :

BUILDING ;

ROAD MAKING AND IMPROVEMENT ;

ROADS OR STREETS ;

ROAD TRAFFIC ;

TOWN AND COUNTRY PLANNING.

INTRODUCTORY

It is desirable at the outset to distinguish building lines from improvement lines. A building line is the line beyond which new buildings, or additions to buildings, must not project, and may be prescribed by the council of a borough or urban district under sect. 155 of the P.H.A., 1875 (*a*), or by a county council or other highway authority under sect. 5 of the Roads Improvement Act, 1925 (*b*). There may or may not be a strip of land in private occupation between the building line and the edge of the highway. The improvement line is a line prescribed by the highway authority, where it is proposed to widen a street, as it indicates the width to which the street will be widened by the council of a borough or urban district under sect. 33 of the P.H.A., 1925, or by a county council under sect. 34 of that Act (*c*), when a street improvement has been completed. The improvement line is thus the boundary of the highway, after it has been widened, and it is obvious that when the improvement scheme has been completed, the building line cannot be nearer the centre of the street than the improvement line. [546]

The power to prescribe a building line is a development of the power conferred by sect. 157 of the P.H.A., 1875 (*d*), of framing bye-laws with respect to the level, width and construction of new streets, by allowing the county council or other highway authority to fix the frontage line to which any building to be erected in a street (whether a new or an existing street) must conform. [547]

As to bye-laws with respect to new streets and the power to widen or improve existing streets, apart from the prescription of an improvement line, see the title ROAD MAKING AND IMPROVEMENT.

As to the power to fix a building line by a town planning scheme, see the title TOWN PLANNING SCHEMES. [548]

(*a*) 13 Statutes 689. This section applies only where rebuilding is proceeding.

(*b*) 9 Statutes 223.

(*c*) 13 Statutes 1128—30.

(*d*) *Ibid.*, 689.

BUILDING LINES

On Reconstruction of Buildings.—For many years, provisions allowing the council of a borough or urban district to require houses or buildings to be set back, when they are being rebuilt, have been in force. These provisions are contained in sect. 155 of the P.H.A., 1875 (*e*), and the P.H. (Buildings in Streets) Act, 1888 (*f*), and may be applied to a rural district, or any contributory place therein, by an order of the M. of H. under sect. 276 of the Act of 1875 (*g*).

Buildings may be set forward, with the consent of the council, for improving the line of the street in any borough or urban district, under sect. 66 of the Towns Improvement Clauses Act, 1847 (*h*), as put in force in all boroughs or urban districts by sect. 160 of the P.H.A., 1875 (*i*).

Sect. 155 of the P.H.A., 1875 (*k*), provides that when any house or building situated in any street in an urban district, or the front thereof, has been taken down, in order to be rebuilt or altered, the urban authority may prescribe the line in which any house or building or the front (*l*) thereof, to be built or rebuilt in the same situation, shall be erected, and such house or building or the front thereof shall be erected in accordance therewith.

The urban authority must pay or tender compensation (*m*) to the owner or other person immediately interested in such house or building for any loss or damage he may sustain in consequence of his house or building being set back or forward, the amount of such compensation in case of dispute to be settled by arbitration in manner provided by the Act of 1875 (*n*).

The wording of the section suggests a deliberate demolition with a view to rebuilding and therefore does not seem to apply if the existing building has been totally destroyed by fire or earthquake. The real point to be considered is whether the building or front wall has to be substantially taken down.

Where the front wall of a building for two storeys had been taken out for the substitution of a shop-front and two upper storeys had been left undisturbed, it was held that the section did not apply (*o*).

It is necessary that the line should be prescribed before the rebuilding commences (*p*), and the previous approval by the council of duly deposited plans might prejudice the right of the council to prescribe a building line in respect of buildings shewn on the plans (*q*).

The local authority might, however, under some circumstances still exercise their right to prescribe a line in respect of certain portions of a building which was already in course of construction (*r*).

No penalty is imposed by sect. 155 of the Act of 1875 for a breach of its provisions, and a council have no power themselves to demolish

(*e*) 13 Statutes 689.

(*g*) *Ibid.*, 741.

(*i*) *Ibid.*, 691.

(*l*) For meaning of front, see *A.-G. v. Prices' Tailors* (1928), *Ltd.*, [1930] 2 Ch. 316; Digest (Supp.).

(*m*) Tender of compensation is not a condition precedent; *A.-G. v. Parish*, [1913] 2 Ch. 444; 26 Digest 564, 2532.

(*n*) P.H.A., 1875, ss. 155, 179, 181; 13 Statutes 689, 702, 704.

(*o*) *A.-G. v. Hatch*, [1893] 3 Ch. 36; 26 Digest 564, 2530.

(*p*) *Folkestone Corpn. v. Woodward* (1872), L. R. 15 Eq. 159; 26 Digest 564, 2590.

(*q*) *Slee v. Bradford Corpn.* (1863), 27 J. P. 612; 26 Digest 563, 2577; *Masters v. Pontypool Local Government Board* (1878), 9 Ch. D. 677; 26 Digest 563, 2573.

(*r*) *Newhaven Local Board v. Newhaven School Board* (1885), 30 Ch. D. 350; 26 Digest 563, 2579.

(*f*) *Ibid.*, 810.

(*h*) *Ibid.*, 551.

(*k*) *Ibid.*, 689.

a building because it projects beyond a line prescribed by them under this section. Their apparent remedy is by injunction or by indictment of the offender (s). [549]

On Erection or Alteration of Buildings.—Sect. 3 of the P.H. (Buildings in Streets) Act, 1888 (a), makes it illegal in any borough or urban district, without the written consent of the urban authority, to erect or bring forward any house or building in any street, or any part of such house or building, beyond the front main wall of the house or building on either side thereof in the same street, or to build any addition to any house or building beyond the front main wall of the house or building on either side of the same.

The construction of this enactment has always been a matter of difficulty. As by sect. 2 (b), expressions used in the Act are to have the same meanings as in the P.H.A., 1875, unless the context otherwise requires, the definition of "street" in sect. 4 of the Act of 1875 (c) applies, and this covers any highway, road or lane. On the other hand, the Act of 1888 presupposes that buildings must have been erected in the street in sufficient number to create a building line, to which the new or altered building must conform. It follows that the Act would have no application to a highway on which occasional buildings have been erected, and that something in the nature of a street, in the popular use of the term, must exist, to render the Act applicable. On the other hand, it would be impracticable to allow the question of the application of the Act to be decided on a consideration of the character of the whole length of a highway which may run for a distance of over a mile, and the street referred to in the Act may consist of a section only of a highway on which buildings have been erected.

It has been held that whether a particular road is a street within the meaning of the Act of 1888 is a question of fact and also of degree, as it may be a street at one end though at the other a country road (d).

The written consent of the authority is required to a departure from the Act, but this need not be under seal, although if the consent is given subject to conditions, it might be desirable that there should be an agreement. Where plans shewing that the line was infringed were passed and stamped as approved by a committee whose proceedings were subsequently ratified by the council, it was held that this was a sufficient consent for the purposes of the sect. (e).

And if projections beyond the building line are shewn on plans approved by the authority the approval of the plans may be considered a written consent within the sect., although the attention of the council when approving the plans may not have been specifically directed to the projections (f).

Sect. 3 of the above Act applies to a building erected on a corner site, which thus may have a building on one side only of it (g).

Adjoining buildings on either side must be looked at as a whole, and a particular wing or projection must not be treated as a front main wall for the purposes of the section (h).

(s) *Sutton Local Board v. Hoare* (1894), 10 T. L. R. 586 (where injunction was granted); 26 Digest 564, 2535.

(a) 13 Statutes 810.

(b) *Ibid.*

(c) *Ibid.*, 625.

(d) *A.-G. v. Siddall* (1898), *Times* Newspaper, June 24.

(e) *Mullis v. Hubbard*, [1903] 2 Ch. 431; 26 Digest 559, 2542.

(f) *Merrett v. Charlton Kings U.D.C.* (1903), 67 J. P. 419; 26 Digest 559, 2543.

(g) *Leyton Local Board v. Causton* (1898), 57 J. P. 135; 26 Digest 561, 2559.

(h) *A.-G. v. Edwards*, [1891] 1 Ch. 194; 26 Digest 560, 2549.

The words "house . . . on either side thereof" in the sect. mean "a house within some near distance, within some degree of proximity, and not one standing some considerable distance away" (i).

Houses set back from the street sixty-two feet were held not to be in the same street for the purpose of controlling the frontage of a new building (k).

A building authorised by a water company's special Act has been held not to be exempt from the provisions of this section (l).

The penalty fixed for breach of sect. 3 of the 1888 Act is 40s. for every day the offence continues after written notice from the authority, and this is recoverable summarily under sect. 251 of the P.H.A., 1875. Although proceedings may thus be taken for recovering penalties, or have in fact been taken and a conviction obtained, nevertheless an action for an injunction to restrain the infringement will lie at the suit of the Attorney-General, and a mandatory order may be made to pull down the structure (m), but the section does not create a new offence for which an indictment will lie, nor does it confer any right of action on a private individual (n).

Where a house had been erected in contravention of the sect. by a builder, it was held that a subsequent owner was not guilty of an offence under the sect., although he had maintained the building in the same state after written notice from the council (o).

Dismissal of proceedings simply through want of evidence of service of the notice required by the sect. is not a bar to subsequent proceedings for the continuation of the offence (p).

Where justices dismiss a summons on its merits subsequent proceedings before justices for continuing the offence cannot be taken, but if the bench is equally divided the case should be reheard by a reconstituted bench (q).

If a council in good faith refuse to approve plans on the ground that the sect. will be contravened, *mandamus* will not be granted to compel them to do so even although the bye-laws as to new buildings are not infringed (r). [550]

Exemptions.—Buildings belonging to a railway company which are used for railway purposes are exempt from the provisions of sect. 155 of the P.H.A., 1875 (s), and sect. 3 of the Act of 1888 (t), in accordance with sect. 157 of the Act of 1875. [551]

Vaults and Cellars.—The prescribed building lines in a thoroughfare are designed to secure a proper circulation of air between buildings; they exist from the ground level upwards.

(i) *Ravensthorpe Local Board v. Hinchcliffe* (1889), 24 Q. B. D. 168; 26 Digest 561, 2550; *A.-G. v. Laird*, [1925] Ch. 318; 26 Digest 272, 112.

(k) *R. v. Fulwood Local Board, Ex parte Livesey* (1895), 59 J. P. 311; 26 Digest 561, 2563.

(l) *Grand Junction Waterworks Co. v. Hampton U.D.C.* (1898), 67 L. J. (Q. B.) 903; 26 Digest 560, 2548.

(m) *A.-G. v. Wimbledon House Estate Co.*, [1904] 2 Ch. 34; 26 Digest 563, 2575.

(n) *Mullis v. Hubbard*, [1903] 2 Ch. 431; 26 Digest 559, 2542.

(o) *Blackpool Corpn. v. Johnson*, [1902] 1 K. B. 646; 26 Digest 562, 2573.

(p) *Jenkins v. Merthyr Tydfil U.D.C.* (1899), 80 L. T. 600; 26 Digest 562, 2570.

(q) *Kinnis v. Graves* (1898), 67 L. J. (Q. B.) 583; 26 Digest 562, 2569.

(r) *R. v. Eastbourne Corpn.* (1900), 64 J. P. 724; 26 Digest 559, 2539.

(s) 13 Statutes 689.

(t) P.H. (Building in Streets) Act, 1888; 13 Statutes 810.

No person may construct any vault, arch or cellar under the carriage-way of a street without written consent of the local authority (*u*). The purpose of this provision seems to be to prevent interference with sewers and other public service facilities. Pavements form part of any highway dedicated to the use of the public as regards their surface; cellars may, however, be built beneath them, and access to them, such as coal plates (*a*) constructed by consent of the local authority, such supervision being to ensure the safety of pedestrians. [552]

THE ROADS IMPROVEMENT ACT, 1925 (*b*)

The above statute, while providing for the improvement of roads in general, includes new provisions for the prescription of building lines. [553]

Obstruction of View at Corners.—To reduce danger to users of a highway by obstruction of view, the Act (sect. 4) empowers the Minister of Transport, or any county council or other highway authority, with respect to land at or near any corner or bend in a highway maintainable by him or them to serve notice upon every owner, occupier and lessee of land restraining them absolutely, or subject to such conditions as may be specified in the notice, from permitting any building, wall, fence or hedge to be erected or planted on the land. The owner or occupier cannot be restrained from executing or permitting a reconstruction or repair of any existing building in such manner as not to create any new obstruction to the view of persons using the highways adjacent. Any such notice binds a successor in title of the owner or occupier of the land, unless he proves that when he succeeded to the land he had, after due inquiry, no reasonable cause to suspect such restrictions were in force. Compensation may be claimed for complying with the notice (*c*).

If any question arises as to whether a notice under sect. 4 should be withdrawn as respects any requirement or restriction objected to, or whether expenses were reasonably incurred in complying with a notice, the matter can be decided, if the parties so agree, by a single arbitrator appointed by them or in default by the county court (*d*).

It will be seen that notice under this section may seriously restrict the right of an owner or occupier to build upon land near a highway. [554]

Prescription of Building Lines.—A county council or other highway authority may, under sect. 5 of the Act of 1925 (*e*), by resolution prescribe in relation to either side of any part of a highway maintainable by them a building frontage line, provided that the Minister's observations are to be considered where the particular road is one classified by him as Class I. or Class II. (*f*), and also the observations of other authorities empowered to make a scheme under the Town Planning Acts, or within whose area the road is situate.

(*u*) P.H.A., 1875, s. 26 (13 Statutes 637), extended to rural districts by the R.D.C. (Urban Powers) Order, 1931 (S.R. & O., 1931, No. 530).

(*a*) Towns Improvement Clauses Act, 1847, s. 73; 13 Statutes 554; incorporated by s. 160, P.H.A., 1875; 13 Statutes 691.

(*b*) 9 Statutes 219 *et seq.*

(*c*) S. 4 (7).

(*d*) Roads Improvement Act, 1925, s. 9; 9 Statutes 227. The arbitrator or court may modify a requirement or restriction (*ibid.*).

(*e*) 9 Statutes 223.

(*f*) Prescription of Building Lines Order, 1927; S.R. & O., 1927, No. 21; M. of T. Act, 1919, s. 17; 3 Statutes 435.

In the first instance, plans showing the proposed building line must be prepared and deposited with the clerk of the council, and written notice of the proposal and of the deposit of the plans must be served on every owner, occupier and lessee of land, affected by the building line, with an intimation that every objection made within the ensuing six weeks will be considered by the council (sect. 5 (2) (a)). Plans of the building line actually prescribed are also, within six weeks after the prescription of the line, to be deposited with the clerk of the council and notices sent to owners, lessees and occupiers affected that the building line has been prescribed and that the plans may be inspected (sect. 5 (2) (b)). It may be observed that no appeal lies to any tribunal against the prescription of a building line. [555]

Where a prescribed building line is in force, it is unlawful, except with the consent of the authority by whom the line was prescribed, to erect or make nearer to the middle of the highway than the building line any new building other than a boundary wall or fence or any permanent excavation below the level of the highway (g).

Sub-sect. (5) of sect. 5 of the Act of 1925 (h), provides for the payment by the prescribing authority of compensation to any person who proves that his property is injured by the prescription of the building line, but any claim must be made within six months after the prescription, or in the case of an owner, lessee or occupier, within six months after the service of notice that the building line has been prescribed. Any question whether compensation is payable, or as to the amount of the compensation is, under sub-sect. (5), to be decided by an official arbitrator under the Acquisition of Land (Assessment of Compensation) Act, 1919 (i). But no compensation is payable in respect of anything done after the date of the service of notice of the proposal to prescribe the line, unless the act was in pursuance of a contract made, or for the purpose of finishing a building begun, before that date. The arbitrator must also take into account any benefit accruing to the person to whom compensation is payable, by reason of any improvement made, or about to be made, to the highway (sect. 5 (5) (b)). [556]

Registration as Local Land Charge.—A building line prescribed under this section should be registered as a local land charge. See the title LOCAL LAND CHARGES. [557]

THE PUBLIC HEALTH ACT, 1925 (k)

Prescription of Improvement Line.—As stated at the beginning of this article, an improvement line indicates the line to which the local authority propose to widen a street, when a street improvement is in contemplation. This power is given to the council of any borough or district by whom sect. 33 of the P.H.A., 1925 (l), has been adopted, and also as respects county roads to any county council by sect. 34 of that Act, without any adoption of the section. An improvement line may be prescribed by a council (1) where any street repairable by the inhabitants is narrow or inconvenient, or without any sufficiently regular boundary line, or (2) where it is necessary or desirable that such a street should be widened.

The terms of sect. 33 closely resemble those of sect. 5 of the Roads

(g) As to the exemption of statutory undertakers, see s. 5 (8).

(h) 9 Statutes 225.

(k) 13 Statutes 1115.

(i) 2 Statutes 1176.

(l) *Ibid.*, 1128.

Improvement Act, 1925 (*m*), already referred to, and provide for the deposit of a plan showing the proposed improvement, for notices being given of the deposit to occupiers and owners interested, for the consideration of objections made to the proposed line and for the prescription of an improvement line after the expiration of six weeks from the date when the notices of deposit were given.

The local authority may, it would appear, prescribe a line which need not be identical with that shown on the deposited plan as the proposed line. It is, however, suggested that, if any material deviation is made from the proposed line, other than an alteration to meet an objection which affects no one but the objector, proceedings should be commenced *de novo* so that no one may be affected by the prescription of a line against which he has had no opportunity to object.

An appeal lies to quarter sessions against the prescription of an improvement line under this section by any person aggrieved thereby (*n*). Notice of appeal must be given within fourteen days after the date of the resolution prescribing the line (*o*), but the section of the 1925 Act contains no provision requiring notice of the passing of the resolution to be given.

The prescription of the line must be registered as a local land charge. See title LOCAL LAND CHARGES.

After the prescription of an improvement line, no new building, erection (*p*) or excavation may be placed or made nearer to the centre line of the street than the improvement line, except with the consent of the council, which may be given for such period and subject to such terms and conditions as they may deem expedient (sect. 33 (*5*)).

Any person whose property is injuriously affected by the prescription of the line is entitled to compensation from the council. In default of agreement, the amount of the compensation is determined by an official arbitrator under the Acquisition of Land (Assessment of Compensation) Act, 1919 (*q*). Unlike sect. 5 of the Roads Improvement Act, 1925 (*r*), the section does not require a claim to compensation to be made within any limit of time. The reason for this is that the actual execution of street widenings is often deferred until intermediate leases and agreements have expired, thus materially reducing the cost of the acquisition of the land. Moreover the imposition of a time limit for claims to compensation, invariably leads to the presentation of a number of claims, which would not be put forward if owners and occupiers were allowed ample time to examine how far the widening of the streets would prejudice their interests in the land. [558]

Sub-sects. (6) and (10) of sect. 33 (*s*) contain provisions on similar lines to those of sect. 5 (*5*) of the Roads Improvement Act, 1925 (*t*), precluding acts done after the deposit of the improvement plan being included in the compensation, and directing the benefits accruing to the claimant to be set off against the compensation payable by the council. Where the council have offered, as part of the compensation,

(*m*) 9 Statutes 223.

(*n*) S. 7, P.H.A. Amendment Act, 1907, as applied by s. 7 and Sched. IV., P.H.A., 1925.

(*o*) P.H.A., 1875, s. 269 ; 13 Statutes 736. As the appeal is not from a decision of a court of summary jurisdiction, the Summary Jurisdiction (Appeals) Act, 1933 ; 26 Statutes 545 ; does not apply.

(*p*) As to what constitutes an erection, see *Sittingbourne U.D.C. v. Lipton, Ltd.*, [1931] 1 K. B. 539 ; Digest (Supp.).

(*q*) 2 Statutes 1176.

(*s*) 13 Statutes 1129.

(*r*) 9 Statutes 223.

(*t*) 9 Statutes 225.

to give the claimant the benefit of some undertaking by them as to the course which they will adopt in effecting the widening, and the offer has not been accepted by the claimant, the arbitrator may embody the undertaking in his award (sub-sect. (7)).

By sub-sect. (8) the authority are allowed to purchase compulsorily any land, not occupied by buildings, which lies between the improvement line and the boundary of the street. As any such land must be added to the street (sub-sect. (9)), the grant of this power of compulsory purchase is reasonable enough, but is believed to be unique, in that no order of a Government department is required to authorise the purchase of a particular plot of land. It follows that the provisions of sects. 158 to 161 of the L.G.A., 1933, do not extend to or vary the procedure for the purchase of land under sect. 33 of the P.H.A., 1925 (*u*). Until the land so purchased is actually added to the street, occupiers and other persons are to continue entitled to reasonable access to the land, and to have the same rights of laying, altering, etc., drains, mains, pipes or electric lines in the land, as if it were part of the street (sub-sect. (9)). [559]

LONDON

The London Building Act, 1930, by sect. 22 (*a*), prohibits the erection, without the consent of the L.C.C., of a building or structure in front of the general line of buildings when the distance of that line from the highway does not exceed 50 feet, or the erection of a building within 50 feet of the highway when the general line is distant more than 50 feet. It is the duty of the superintending architect to define the general line of buildings, but any person deeming himself aggrieved by the certificate defining such line may appeal to the Tribunal of Appeal (sect. 25). (For the Tribunal of Appeal, see title SPECIAL TRIBUNALS.) The L.C.C. has frequently granted consent to the erection of buildings in advance of the general line, conditionally upon the land in front of the proposed buildings being added to the public way without compensation. Many streets have thus been widened without cost to the Council or detriment to owners. The Roads Improvement Act, 1925, extends to London, but sect. 33 of the P.H.A., 1925, does not extend to London. For the purpose of removing obstructions to the view of persons using a highway under sect. 4 of the former Act (*b*), the council of each metropolitan borough and the common council of the City of London would be the highway authority. On the other hand, the power of prescribing building lines under sect. 5 of Roads Improvement Act, 1925 (*b*), was in London solely exercisable by the L.C.C. under sect. 5 (*b*) (*c*), but the powers have been transferred to and are now exercisable by the common council and the metropolitan borough councils (*d*). See also the title LONDON BUILDING. [560]

(*u*) 13 Statutes 1128.

(*b*) See p. 294, *ante*.

(*d*) S.R. & O., 1933, No. 114.

(*a*) 23 Statutes 230.

(*c*) 9 Statutes 225.

BUILDING BYE-LAWS

	PAGE		PAGE
I. GENERAL POWERS - - -	298	II. MODEL BYE-LAWS AS TO NEW	
Extension of 1890 - - -	299	STREETS AND BUILDINGS - -	302
Approval of Plans - - -	300	III. NEW BUILDINGS - - -	303
Height of Buildings, Chimneys, etc. - - -	300	Classification - - -	303
Operations Treated as Erection of New Buildings - - -	300	What is a New Building - -	303
Application of New Street Bye- laws	301	IV. APPROVAL OF PLANS - -	305
Smoke Abatement - - -	301	Submission of Plans - - -	305
Fire Precautions - - -	301	Retention - - -	305
Housing of Working Classes - -	301	Period for Approval - - -	305
Back-to-Back Houses - - -	302	Commencement of Work - -	306
Suspension of Bye-laws - - -	302	Enforcement of Conditions on Approval of New Street - -	306
Application for Confirmation - -	302	V. ALTERATION OF BUILDINGS -	306
		Bye-laws - - -	306
		Conversion of Buildings - -	306
		VI. HOARDS DURING BUILDING -	307

See also titles :

ADVERTISEMENTS ;
 ASHPITS ;
 BACK-TO-BACK HOUSES ;
 BUILDING ;
 BYE-LAWS ;
 CESSPOOLS ;
 CHIMNEYS ;
 CINEMATOGRAPHS ;
 CLOSETS, CONVERSION OF ;
 DANGEROUS BUILDINGS ;
 DRAINS ;
 FACTORIES AND WORKSHOPS ;
 FIRE PROTECTION ;
 FLATS ;

HOUSING ;
 INSANITARY HOUSES ;
 LONDON BUILDING ;
 PLANS ;
 REPAIR OF ROADS ; *
 ROAD MAKING AND IMPROVEMENT ;
 SAFETY PROVISIONS OF BUILDINGS AND
 STANDS ;
 SANITARY CONVENIENCES ;
 SMOKE ABATEMENT ;
 TENTS, SHEDS AND VANS ; †
 TOWN PLANNING SCHEMES ;
 WATER SUPPLY.

* For the paving of courts, passages, etc.

† For temporary buildings.

I. GENERAL POWERS

Powers to make bye-laws governing the construction of buildings and of adjuncts to buildings have been conferred on the councils of boroughs and districts by several statutes. The purpose of such bye-laws is to supplement the statute law by allowing the safety and sanitation of buildings to be dealt with in subordinate codes of law which can be framed with special reference to the circumstances of the particular borough or district.

In a wider sense, building bye-laws may be said to be framed for the protection of the health not only of the occupants of houses and buildings but also of the public in general, and with this object giving a control over the width of streets, sewerage, open spaces about buildings as well as sanitary accommodation in buildings (a). All such bye-laws must be confirmed by the M. of H. As to the procedure to obtain confirmation, see the title **BYE-LAWS**.

(a) See Report of Departmental Committee on Building Bye-laws, November 13, 1918.

The councils of boroughs, urban districts and rural districts are empowered by sect. 157 of the P.H.A., 1875 (*b*), to make bye-laws with respect to the following matters :

- (1) with respect to the level, width and construction of new streets, and provision of the sewage thereof ;
- (2) with respect to the structures of walls, foundations, roofs and chimneys of new buildings for securing stability and the prevention of fires, and for purposes of health ;
- (3) with respect to the sufficiency of the space about buildings to secure a free circulation of air, and with respect to the ventilation of buildings ;
- (4) with respect to the drainage of buildings, to water-closets, earth-closets, privies, ashpits and cesspools in connection with buildings, and to the closing of buildings or parts of buildings unfit for human habitation, and the prohibition of their use for such habitation (on the last question, see title INSANITARY HOUSES).

The bye-laws may further provide for their observance by enacting therein provisions as to the giving of notices, as to the deposit of plans and sections by persons intending to lay out streets or to construct buildings, as to inspection by the council, and as to their power (subject to the provisions of the Act of 1875) to remove, alter or pull down any work begun or done in contravention of the bye-laws. [561]

Extension of 1890.—The above powers are extended by sect. 23 (1) of the P.H.A. Amendment Act, 1890 (*c*), which empowers the council of a borough or district in which the sub-section is in force (*d*) to make bye-laws with respect to :

- (i.) the keeping of water-closets supplied with sufficient water for flushing ;
- (ii.) the structure of floors, hearths and staircases and the height of rooms intended for human habitation ;
- (iii.) the paving of yards and open spaces in connection with dwelling-houses ; and
- (iv.) the provision in connection with the laying out of new streets of secondary means of access where necessary for the purpose of the removal of house refuse and other matters.

The proviso to the last paragraph but one of sect. 157 of the P.H.A., 1875, exempted from bye-laws buildings erected before the locality became part of an urban district, or if the locality is part of a rural district before sect. 157 was applied to the locality by order of the Local Government Board or the M. of H. But the proviso is modified by sect. 23 (2) of the Act of 1890 (*d*), which allows bye-laws with regard to the drainage of buildings, and to water-closets, earth-closets, privies, ashpits and cesspools, and the keeping of water-closets supplied with sufficient water, to be made so as to affect buildings erected before the material date described in the proviso already mentioned.

Sub-sect (3) of sect. 23 of the Act of 1890 allows a R.D.C. to make bye-laws as to structure of walls and foundations of new buildings for

(*b*) 13 Statutes 689 ; Extended to all R.D.Cs. by the R.D.C. (Urban Powers) Order, 1931 ; S.R. & O., 1931, No. 580 ; 24 Statutes 262.

(*c*) 13 Statutes 833.

(*d*) This sub-section is in force in boroughs and urban districts if the council have adopted Part III. of the Act of 1890. But it was extended to all rural districts by the R.D.C. (Urban Powers) Order, 1931 ; S.R. & O., 1931, No. 580 ; 24 Statutes 262. (See also *ante*, p. 283, note (*i*).)

purposes of health, sufficiency of space about and ventilation of buildings, drainage of buildings and water-closets, etc., the structure of floors, height of habitable rooms and water-closet flushing, if the council have adopted Part III. of the Act of 1890, or sect. 23 (3) has been put in force by an order of the M. of H. under sect. 5 of the Act (e). [562]

Approval of Plans.—Common to both urban and rural authorities is the provision in sect. 158 of the P.H.A., 1875 (f), that where a notice or plan is required to be deposited the council shall within one month express in writing to the applicant an approval or disapproval of the intended work, and if the work is commenced without approval or in any respect not in conformity with any bye-law the authority may cause the work to be pulled down or removed. Expenses incurred by the council in the removal of work contrary to a bye-law may be recovered in a summary manner at their discretion either from the person who executed the work or from the person who caused it to be executed. [563]

The continued existence of an offending work or part of work is by the section made a continuing offence, but a penalty will not be incurred in respect thereof after the expiration of one year from the day when the offence was committed or the bye-law was broken. [564]

Height of Buildings, Chimneys, etc.—Where sect. 24 of the P.H.A. Amendment Act, 1907 (g), has been applied to a borough or district by order, bye-laws may also be made by the council with respect to the height of chimneys of buildings and the height of buildings and with respect to the structure of chimney shafts for furnaces. [565]

Operations Treated as Erection of New Buildings.—The P.H.A. Amendment Act, 1907, sect. 23 (h), further extended the purview of building bye-laws by providing that the following operations should be deemed to be the erection of a new building :

- (a) the re-erection, wholly or partially, of any building of which an outer wall is pulled down or burnt down to or within ten feet of the surface of the ground adjoining the lowest storey of the building, and of any frame building so far pulled down or burnt down as to leave only the framework of the lowest storey ; [566]
- (b) the conversion into a dwelling-house of any building not originally constructed for human habitation, or the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only ; [567]
- (c) the re-conversion into a dwelling-house of any building which has been discontinued as or appropriated for any purpose other than that of a dwelling-house ; [568]
- (d) the making of any addition to an existing building by raising any part of the roof, by altering a wall, or making any projection from the building, but so far as regards the addition only ; and [569]
- (e) the roofing or covering over of an open space between walls or buildings. [570]

Application of New Street Bye-laws.—Although the construction of

(e) 13 Statutes 826.

(f) *Ibid.*, 690 ; extended to all rural districts by the R.D.C. (Urban Powers) Order, 1931 ; S.R. & O., 1931, No. 580 ; 24 Statutes 262.

(g) 13 Statutes 919.

(h) *Ibid.* This section is in force only in boroughs or districts to which it is applied by order.

new buildings beside an existing highway need not constitute the laying out of a new street (*i*) where an order has been made under sect. 30 of the P.H.A., 1925 (*ii*), any person so building must comply with the bye-laws as to new streets. Under that section a local authority may, on the submission of plans under the bye-laws, require a street to be laid out of a greater width than that prescribed by the bye-laws. [571]

Smoke Abatement.—The P.H. (Smoke Abatement) Act, 1926, sect. 5 (*j*), allows the council of a borough or urban district to make bye-laws requiring the provision in new buildings (other than private dwelling-houses) of such arrangements for heating or cooking as are calculated to prevent or reduce the emission of smoke (*k*), thus enlarging the provisions of the 1875 Act, sect. 157. [572]

Fire Precautions.—Sect. 15 of the Factory and Workshop Act, 1901 (*l*), empowers borough and district councils to make bye-laws for providing means of escape from fire in the case of any workshop or factory. A model series has been drawn up by the M. of H., and sects. 182 to 186 of the P.H.A., 1875 (*m*), are applied.

Cinematograph buildings to which the Factory and Workshop Acts, 1901 to 1920, do not apply are the subject of special safety provisions (*n*), especially where raw celluloid or film is stored or used and these provisions are administered by the borough and district councils (*o*). [573]

Housing of Working Classes.—The Housing Act, 1930 (*p*), requires a local authority who have passed a resolution declaring an area to be an improvement area to make and enforce bye-laws satisfactory to the Minister for preventing and abating overcrowding in the area and generally for securing the improvement of housing conditions and the subsequent maintenance of a proper standard of housing conditions; such bye-laws are to be in consonance with sects. 6 and 7 of the Housing Act, 1925 (*q*). These provisions enlarge the power of making and enforcing bye-laws under the P.H.A., 1875, as respects houses intended or used for occupation by the working classes to include, *inter alia*, as regards building matters:

- (1) enforcing drainage, promoting ventilation and the adequate lighting of staircases used in common and of rooms in houses;
- (2) stability, prevention of, and safety from fire;
- (3) cleansing and redecoration of premises at stated periods;
- (4) paving of courts and courtyards.

Adequate provision for the use of each family of closet accommodation, water supply and accommodation for washing, and the storage, preparation and cooking of food may also be required by the bye-laws.

A model series has been issued by the M. of H.

A power of entry is given by sect. 7 of the Housing Act, 1925, above referred to, to the owner for the purpose of executing work required

(*i*) *Devonport Corpn. v. Tozer*, [1903] 1 Ch. 759; 26 Digest 558, 2523.

(*ii*) 13 Statutes 1126.

(*j*) *Ibid.*, 1160.

(*k*) For bye-laws as to nuisance from smoke, see *ibid.*, s. 2; 13 Statutes 1159.

(*l*) 8 Statutes 527. As to powers of entry, etc., see *ibid.*, s. 125; 8 Statutes 583.

(*m*) 13 Statutes 704 (see now sect. 250 of the L.G.A., 1933; 26 Statutes 440; replacing those portions of the sections repealed by that Act).

(*n*) Celluloid and Cinematograph Film Act, 1922; 13 Statutes 977.

(*o*) Under the Cinematograph Act, 1909, the licensing authority is the county council or county borough council; 19 Statutes 352.

(*p*) S. 8 (iii.); 23 Statutes 403.

(*q*) 13 Statutes 1006.

by the bye-laws, and in default of the owner, the council have power to execute works. An appeal lies to the county court. [574]

Back-to-Back Houses.—Notwithstanding any provision in any local Act or bye-law in force in any borough or district it is unlawful to erect any back-to-back houses intended to be used as dwellings for the working classes, and any such house shall be deemed to be unfit for human habitation (r). [575]

Suspension of Bye-laws.—For the purpose of facilitating the erection of dwelling-houses under the Housing Act, 1925, the M. of H. may prescribe a code of building bye-laws relating to the level, width and construction of new streets (s), or he may relax existing bye-laws for a similar purpose (t), or he may revoke unreasonable bye-laws where they impede erection of buildings generally (u).

Bye-laws and regulations which may impede the execution of a scheme under the Town and Country Planning Act, 1932 (a), e.g. as to new streets, buildings, open spaces and sewerage, may be suspended by the scheme where their provisions are similar to or inconsistent with the scheme. [576]

Application for Confirmation.—The steps to be taken are described in the title BYE-LAWS on p. 362, *post*. Before a series of bye-laws is adopted by a council it should be submitted in draft to the M. of H. for preliminary approval, and it is desirable that this draft should be based on a model series issued by the Ministry, if a model series has been drawn up by them, any additional clauses being interleaved. [577]

II. MODEL BYE-LAWS AS TO NEW STREETS AND BUILDINGS

Model building bye-laws under sect. 157 of the P.H.A., 1875 (b), were first issued in 1877 as drafts to assist a council in preparing their bye-laws. These have been subjected to constant revision since 1900 commensurate with a very great advance in building science since that time. New methods of construction and design almost inevitably demand frequent revisions of the model. For example, the earlier form of bye-laws with respect to walls which were drafted with particular reference to brick construction and imposed restrictive conditions as to thickness and the use of materials, are inappropriate to types of construction now in use, such as building with hollow blocks or slabs of terra-cotta, concrete and such-like materials, reinforced brickwork or reinforced concrete; and many of the older bye-laws do not provide for hollow and half-timbered walls and steel or other framed walls hung with tiles, slates, etc., filled in where necessary with incombustible materials. Again the ordinary clauses for the laying out of roads do not permit of some of the classes of roadways which have been designed for "garden cities," or the exceptional arrangements which are demanded in certain cases by configuration of the ground.

The most recent model bye-laws consist of three codes, respectively devised for urban, rural and intermediate districts (c). [578]

The urban model is a full series intended for towns in which a skilled

(r) Housing Act, 1925, s. 17; 13 Statutes 1012; as amended by Housing Act, 1930, Sched. V.; 23 Statutes 442.

(s) Housing Act, 1925, s. 100 (1); 13 Statutes 1058.

(t) *Ibid.*, s. 99; as amended by the Housing Act, 1930, Sched. V.; 23 Statutes 444.

(u) *Ibid.*, s. 101.

(a) S. 11 (1), Sched. I., Part I.; 25 Statutes 484, 525.

(b) 13 Statutes 689.

(c) See Circular to district councils of the Local Government Board, August 29, 1912.

staff of officers is available to exercise a control in detail over every class and type of building; new streets, stability of structures, fire prevention and means of escape from fire, as well as for health purposes. [579]

The rural series, first issued in 1901, contains only primary requirements for the control of sanitation, leaving the width and construction of streets uncontrolled and requiring only elementary rules of building construction to be complied with, *e.g.* the provision of damp courses. [580]

The intermediate series, originally drafted in 1905 for rural districts containing small towns, is wider in its scope now than was originally intended; its sanitary provisions apply to the factory as to the dwelling-house because the council have control of the sewers, and the factory of the present day, considerably more extensive in area than its predecessors, consumes a much larger volume of water, which is discharged into the sewers.

The most recent edition of the Urban model was published in 1931, of the Rural model in 1933, and of the Intermediate model, applying to a borough or an urban or rural district, in 1932 (*d*). [581]

III. NEW BUILDINGS

Classification.—New buildings fall into one of three categories (*e*): (1) public; (2) warehouse; and (3) domestic, and for bye-law purposes there is a fourth category, namely dwellings for the working classes. Although cubic content is a factor in determining in which of these three classifications a new building is included, it is possible for two of the classifications to apply to it; for instance, a building in the nature of an hotel for poor men is not a dwelling-house adapted to be inhabited by the working classes, and it may be a public building (*f*).

The P.H.As., however, are directed at operations in a particular part of a building and the appropriate bye-laws may apply to a component part of a building rather than the whole, *e.g.* bye-laws as to the structure of walls, foundations, roofs and chimneys, and as to sanitary appliances and drainage. [582]

What is a New Building.—Sect. 159 of the P.H.A., 1875 (*ff*), provides that for the purposes of that Act the re-erecting of any building pulled down to or below the ground floor, or of any frame building of which only the framework is left down to the ground floor, or the conversion of a building into a dwelling-house, or one house into two or more, shall be the erection of a new building. The definition in the Act is not exhaustive and the question whether a building is a new building or not has been decided over and over again to be a question of fact: it is a question of degree; it is impossible to lay down a general rule as to what is or is not a new building. The point must be left to a decision on the facts of each case (*g*). [583]

Under sect. 23 of the Act of 1907 (*h*), the making of certain additions to a building is deemed to be the erection of a new building as respects the addition so made. In one case the plaintiffs proposed to build an addition to the front of one of the school boarding houses consisting of a

(*d*) M. of H. Model Bye-laws, Series IV., IVA., IVB. Copies may be purchased of H.M. Stationery Office or through any bookseller.

(*e*) For analysis of these categories, see BUILDING, *ante*, pp. 282, 283.

(*f*) *L.C.C. v. Rowton House Co.* (1897), 77 L. T. 693; 26 Digest 510, 2149.

(*ff*) 13 Statutes 691.

(*g*) *James v. Wyvill* (1884), 48 J. P. 725, *per* Lord COLERIDGE, C.J.; 38 Digest 181, 218. See Lumley's Public Health, 10th ed., pp. 358, 379-381.

(*h*) See *ante*, pp. 300, 301.

projection containing three rooms one above the other. The council refused to approve the plans, as the proposed additions would infringe a bye-law requiring every person who shall erect a new domestic building to provide in the rear of such building an open space exclusively belonging thereto of an aggregate extent of not less than 150 square feet. Plaintiffs contended that the bye-law was unreasonable because it was impossible to provide an open space at the rear of a new building which consisted of an addition to an existing building. It was held that the bye-law was unreasonable and therefore bad (i). [584]

The question whether a proposed building operation will form a new building or not is of consequence, because for a mere structural repair or minor alteration it is not necessary to give notice and formally deposit plans and sections with the council. In the case of a new structure, however, not only is a formal sanction necessary but the infringement of a bye-law may constitute an offence involving a heavy penalty (k) and demolition of the offending structure. [585]

Bye-laws invariably contain definition clauses and clauses exempting certain buildings from their application, e.g. the buildings of railway companies and other public utility undertakers (l). These clauses have been the subject of judicial decisions. Thus, it has been held that a barn may be a domestic building (m). A stable has been held not to be a domestic building for the purpose of the provision of an open space at the rear (n).

An erection to be a "new building" within the meaning of bye-laws must be a structure to which the bye-laws are intended to apply, and hoardings, enclosing land used for preparing wood for hoardings, were held not to be new buildings to which the bye-laws applied (o). [586]

A foundation and brick casing to a boiler sunk into the ground is not a new building (p), neither is a conservatory of wood and glass (q), nor is a portable theatre erected for a short period, and an injunction may therefore be granted to restrain the council from pulling it down on the ground that it infringes a bye-law (r). A bye-law prohibiting the erection of any building by the side of a new street before the street had been constructed has been held valid (s); a wooden structure in the nature of a bungalow with wheels attached has been held to be a new building (t), and the conversion of a house into a series of flats is the erection of a new building (u). [587]

(i) *Repton School Governors v. Repton R.D.C.*, [1918] 2 K. B. 133; 38 Digest 196, 324.

(k) P.H.A., 1875, s. 158; 13 Statutes 690. As to the power of M. of H. to waive bye-laws and to substitute others, see *ante*, p. 302, but this power would not seem to free a person from giving notice of intention to build.

(l) The last para. of s. 157 of the P.H.A., 1875, exempts buildings belonging to railway companies and used for the purposes of the railway under any Act of Parliament from bye-laws made under the section.

(m) *R. v. Preston R.D.C., Ex parte Longworth* (1911), 106 L. T. 37; 38 Digest 192, 296.

(n) *Collins v. Greenwood* (1910), 103 L. T. 36; 38 Digest 186, 252. See also 23 Halsbury, p. 416.

(o) *Slaughter v. Sunderland Corpn.* (1891), 60 L. J. (M. C.) 91; 38 Digest 184, 235.

(p) *Gery v. Black Lion Brewery Co.* (1891), 55 J. P. 711; 38 Digest 184, 238.

(q) *Hibbert v. Acton Local Board* (1889), 5 T. L. R. 274; 38 Digest 180, 212.

(r) *Newell v. Ormskirk U.D.C.* (1907), 71 J. P. 119; 38 Digest 183, 232.

(s) *Baker v. Portsmouth Corpn.* (1878), 3 Ex. D. 157; 38 Digest 194, 311. And see *Robinson v. Barton-Eccles Local Board* (1883), 8 App. Cas. 798, *per* Lord SELBORNE, L.C., at p. 801; 26 Digest 269, 86.

(t) *Andrews v. Wirral R.D.C.*, [1916] 1 K. B. 863; 38 Digest 183, 233.

(u) *Cammell, Laird & Co. v. Brownridge* (1919), 88 L. J. (K. B.) 1301; 38 Digest 182, 227.

IV. APPROVAL OF PLANS

Submission of Plans.—Before a person may embark upon building operations either of a temporary or of a permanent character he must submit his proposals to the borough council or district council and in such manner as the bye-laws or regulations of the council may require. This application is distinct from and anterior to a notice of intention to commence building works, which is primarily for the purpose of warning the council or their representatives, that building operations are being begun. The preliminary proposals are submitted to the council to give them an opportunity of examining them by the light of the bye-laws and of approving or disapproving or approving them subject to amendment. The preliminary proposals are usually submitted in the form of :

- (a) A survey plan of the site (frequently from an ordnance survey enlarged) to a scale of 44 ft. = 1 in., or 22 ft. = 1 in. indicating thereon the adjoining thoroughfare (a) and adjacent buildings with their frontage lines and open spaces surrounding.
- (b) Scale plans generally to $\frac{1}{8}$ in. = 1 ft. with illustrative sections.

These are required to be sufficiently comprehensive to indicate not only the exact outlines, levels (b) and construction of the proposed building, but also the purposes for which it is being erected and the classification of the building under the bye-laws (c). [588]

Purely structural matters and street matters are usually considered by the surveyor or by the engineer if one is employed by the council ; health matters such as position of water-closets (d) or cesspools, or the ventilation of rooms, by the M.O.H. and the sanitary inspector ; these several individuals presumably advise the committees of the council. [589]

Retention.—Where sect. 16 of the P.H.A. Amendment Act, 1907 (e), has been applied by order to a borough or district, the section allows the council to retain any drawings, plans, elevations, sections, specifications and written particulars, descriptions, or details deposited with and approved by them in pursuance of any enactment for the time being in force in the district or of any bye-law thereunder (f). It will be seen that the section covers only documents which have been approved by the council. [590]

Period for Approval.—Where a notice, plan or description of any work is required by any bye-law to be laid before the council, they must, within one month after the same has been delivered or sent to their surveyor or clerk, signify in writing their approval or disapproval of the intended work to the person proposing to execute the same ; and if the work is commenced after such notice of disapproval or before the expiration of such month without such approval, and is in any respect

(a) As to new streets, see Towns Improvement Clauses Act, 1847, s. 57 ; 13 Statutes 549 ; which, however, is only in force in boroughs and districts to which it has been applied by a local Act.

(b) Towns Improvement Clauses Act, 1847, s. 38 ; 13 Statutes 544. In force only where applied by a local Act.

(c) For various classifications of buildings, see *ante*, p. 303.

(d) As regards privies, etc., a report of the surveyor or sanitary inspector is contemplated in P.H.A., 1875, ss. 36, 41 ; 13 Statutes 640, 642.

(e) 13 Statutes 916.

(f) As to right to retain plans deposited in pursuance of a bye-law, see *Gooding v. Ealing Local Board* (1884), 1 T. L. R. 62 ; 38 Digest 193, 304.

not in conformity with any bye-law of the council, they may cause so much of the work as has been executed to be pulled down or removed (g). [591]

Commencement of Work.—If sect. 15 of the P.H.A. Amendment Act, 1907 (h), has been applied by order to a borough or district, the deposit of any plans or sections of any street or building, in pursuance of any bye-law in force, may by notice in writing to the person by whom the plans or sections have been deposited be declared by the council to be of no effect, if the work to which the plans or sections relate is not commenced within three years of their deposit. Notice of this provision must be attached by the council to every approval of an intended work of which plans and sections have been deposited. [592]

Enforcement of Conditions on Approval of New Street.—Where a council have approved any plans and sections for a new street, subject to any conditions imposed or authorised by any bye-laws in force in the area, those conditions may be enforced at any time by the council against the owner for the time being of the land to which the conditions relate (i), and such conditions should be registered as a local land charge (see title LOCAL LAND CHARGES). [593]

V. ALTERATION OF BUILDINGS

Bye-laws.—Where Part III. of the P.H.A. Amendment Act, 1890, has been adopted by the council of a borough or district, sect. 23 (4) of the Act (k), allows the council to make bye-laws to prevent buildings which have been erected in accordance with bye-laws (l) from being altered in such a way that if at first so constructed they would have contravened the bye-laws.

Sect. 33 of the same Act provides that where the plan of a building in which the building is described otherwise than as a dwelling-house, has been deposited with the council in pursuance of an Act or bye-law, any person who uses or permits such building to be used for the purposes of habitation (other than by a caretaker) shall be guilty of an offence and liable to a penalty. But where the building has an open space in the rear sufficient to comply with the requirements of the Act or bye-laws, and where such structural alterations are made as are necessary to render the building fit for a dwelling-house, it may be used as a dwelling-house. [594]

Conversion of Buildings.—Reference has been made on p. 300, *ante*, to sect. 23 of the P.H.A. Amendment Act, 1907, which requires certain building operations to be treated as the erection of a new building. One effect of this provision is to ensure the deposit of plans and sections (m) with the council as in the case of entirely new projected

(g) P.H.A., 1875, s. 158; 13 Statutes 690. If the submitted plans comply with the bye-laws, the council have no jurisdiction to refuse to approve them and if, the facts being admitted, they refuse to approve the plans on the ground that bye-laws are not being complied with, the court can review their decision by *mandamus*. *R. v. Preston R.D.C., Ex parte Longworth* (1911), 106 L. T. 37; 38 Digest 192, 296.

(h) 13 Statutes 916.

(i) Housing Act, 1925, s. 100 (2); 13 Statutes 1058.

(k) 13 Statutes 834.

(l) The words are "bye-laws made under the P.H.As." but bye-laws made under Acts repealed by the P.H.A., 1875, and not inconsistent with that Act are deemed to be made under the P.H.A., 1875 (see s. 326 of the latter; 13 Statutes 759).

(m) As to which, see *ante*, p. 305.

works, thus keeping all building operations regarding dwellings within their area under their supervision. Where an owner adapted an old railway carriage placed in a field so as to convert it into a dwelling-house, but left untouched the main portion of the shell, it was held that he had erected a new building within sect. 23 of the Act of 1907 (*n*).

The appellants pulled down part of a very old inn, including certain outer walls, but left the rest standing. They gave notice and deposited plans showing their intention to erect a new part where the old part stood, but the notice and plans did not extend to the whole building. It was held, overruling *Leonard v. Hoare* (*o*), that on the true construction of the above section only such part of a building as had been pulled down to be re-erected was to be deemed a new building and that the appellants had therefore complied with the bye-laws in submitting only partial plans and sections (*p*). [595]

VI. HOARDS DURING BUILDING

The erection of hoards, gantrys, scaffolding and similar structures in streets during building operations is governed by sect. 80 of the Towns Improvement Clauses Act, 1847 (*q*), but if Part III. of the P.H.A. Amendment Act, 1890, has been adopted for a borough or urban district, sect. 80 of the Act of 1847 is superseded by sect. 34 of the Act of 1890 (*r*). Sect. 80 of the Act of 1847 is not in force in a rural district, because sect. 34 of the Act of 1890 has been extended to rural districts in general by order of the M. of H. (*s*).

Sect. 34 of the Act of 1890 requires every person intending to build or take down any building, or to alter or repair the outward part of any building in a street or court, to cause close-boarded hoards or fences to be put up to the satisfaction of the council, unless they otherwise consent in writing. If the council require, a convenient covered platform and handrail as a footway for passengers must be provided and the hoard or fence must be sufficiently lighted at night.

There is no enactment generally requiring a licence for the erection of such structures, but where sect. 32 of the P.H.A. Amendment Act, 1907 (*t*), has been applied by order of the M. of H. to a borough or district, a hoarding or similar structure which is in or abuts on or adjoins a street (*u*), must not be used for any purpose unless it is securely fixed to the satisfaction of the council. [596]

(*n*) *Hanrahan v. Leigh-on-Sea U.D.C.*, [1909] 2 K. B. 257; 38 Digest 182, 224. See also Lumley's Public Health, 10th ed., 1117.

(*o*) [1914] 2 K. B. 798; 38 Digest 181, 220.

(*p*) *R. v. Foot's Cray U.D.C.*, [1916] 1 K. B. 246; 38 Digest 181, 221.

(*q*) 13 Statutes 556. This section is applied to boroughs and urban districts in general by s. 160 of the P.H.A., 1875; 13 Statutes 691.

(*r*) 13 Statutes 837.

(*s*) The R.D.C. (Urban Powers) Order, 1931; S.R. & O., 1931, No. 580; 24 Statutes 262. See also *ante*, p. 283, note (*é*).

(*t*) 13 Statutes 923.

(*u*) Whether such hoarding is "in or abutting on or adjoining any street" is a question of fact to be decided by the Justices. *Stockport Corp'n. v. Rollinson* (1910), 102 L. T. 567; 26 Digest 567, 2603. A hoarding for advertisements 60 ft. long and 12 ft. above a hedge, no part of such hoarding being nearer to the street than 2 ft. and having the hedge between it and the street, does not "abut" on the street (*Barnett v. Covell* (1903), 90 L. T. 29; 26 Digest 567, 2601).

BUILDINGS, SAFETY PROVISIONS OF

See SAFETY PROVISIONS OF BUILDINGS AND STANDS.

BUILDINGS, SANITARY CONVENIENCES IN

See SANITARY CONVENIENCES.

BURGESS ROLL

See REGISTRATION OF ELECTORS.

BURIAL AND CREMATION

	PAGE		PAGE
GENERAL OBSERVATIONS - -	308	Murderers - - - -	312
RIGHTS AND DUTIES OF PRIVATE PERSONS - - - -	309	Felo de se - - - -	312
THE DEVELOPMENT OF THE POLICY OF BURIAL LAW IN ENGLAND - - - -	311	Drowned Persons - - - -	312
MISCELLANEOUS RIGHTS OF BURIAL - - - -	312	Seamen - - - -	312
		Persons Dying of Infectious Disease - - - -	312
		Stillborn Children - - - -	313
		CREMATION - - - -	313

See also titles :

BURIAL AUTHORITIES ;
BURIALS AND BURIAL GROUNDS ;
CEMETERIES ;
CEMETERY SUPERINTENDENT ;
CONSECRATION ;

CORPSES ;
CREMATION ;
DISUSED BURIAL GROUNDS ;
MORTUARIES.

FOR GENERAL LAW RELATING TO DISPOSAL OF THE DEAD, *See* HALSBURY'S LAWS OF ENGLAND (2ND ED.), VOL. 3, TITLE "BURIAL AND CREMATION," AND VOL. 11, TITLE "ECCLESIASTICAL LAW."

General Observations.—From the earliest times among civilised nations burial has been the prevalent custom of disposing of the dead, and the only one contemplated by civil and ecclesiastical law, though the courts have never stigmatised other methods as unlawful (*a*). Such disposal "in a decent manner" is a duty resting upon some one, either by burial or burning, for cremation of human remains is not un-

(*a*) *R. v. Price* (1884), 12 Q. B. D. 247 ; 7 Digest 563, 380.

lawful provided it is conducted in such a manner as not to amount to a nuisance (*b*), or is not intended to prevent a coroner holding an inquest (*c*); but it *is* unlawful in this country, generally speaking, to dispose of a body without a registrar's certificate or coroner's order (*d*). [597]

The Rights and Duties of Private Persons.—Briefly, under the common law, an executor with available assets must give "Christian," that is "decent," burial to a testator who has left a valid will. A husband must bury his wife (and apparently he is liable even though separated from her and she leaves no assets); and a parent a deceased child, failing which class of persons the duty devolves upon the householder in whose house the person dies, unless any ecclesiastical prohibition attaches to the burial (*e*). Neglect to act in these cases may be a common law misdemeanor (*f*). As regards the burial of the poor, there is an obligation cast on the councils of counties and county boroughs (as successors to the guardians) to provide for the burial of poor persons dying *in their institutions*, but apparently none for those dying outside (*e*). Provisions enabling the burial of poor persons to be undertaken by county and county borough councils are now contained in the Poor Law Act, 1930, sects. 75—78 (*g*), and will be dealt with in the title BURIALS AND BURIAL GROUNDS. [598]

All parishioners and inhabitants of a parish have, further, a common law right to be buried in the parish churchyard (apart from any prohibitions imposed by ecclesiastical law), and with the performance of the service of the Church of England. The whole of the churchyard is consecrated ground, and it is the duty of every minister of the Established Church to perform the burial service at the burial of a person entitled to sepulture therein, on being given convenient notice (*h*). Since the establishment of burial grounds under the Burial Acts, 1852 to 1906 (*i*), and cemeteries under the P.H. (Interments) Act, 1879 (*k*), these burial places have become a substitute for the parish churchyard, and under the Burial Laws Amendment Act, 1880 (*l*), a body may be buried in consecrated ground without, or in unconsecrated ground with, the use of the Church of England service. Previous to 1880, no Minister of the Church of England was allowed to perform the burial service in unconsecrated ground. [599]

A shortened form of service over an unbaptised person, an ex-communicate, or *felo de se* (all these being excluded from churchyard burial by ecclesiastical law) is also permitted by sect. 13 of the Act of 1880; nor may a minister refuse to perform a service in the case of a person baptised according to the forms of a church or sect other than the Church of England (*m*). A layman may even baptise "in the Name of the Trinity" (*n*). At one time, Christian burial was denied

(*b*) *R. v. Price* (1884), 12 Q. B. D. 247; 7 Digest 563, 380.

(*c*) *R. v. Stephenson* (1884), 13 Q. B. D. 331; 7 Digest 563, 381.

(*d*) As to registration, etc., see title BURIALS AND BURIAL GROUNDS.

(*e*) *R. v. Stewart* (1840), 12 A. & E. 773; 7 Digest 522, 13.

(*f*) *R. v. Vann* (1851), 2 Den. 325; 7 Digest 522, 14.

(*g*) 12 Statutes 1005.

(*h*) *Canones Ecclesiastici* (1603), 68. Further as to this, see 3 Halsbury (Hailsham ed.), pp. 460 *et seq.*

(*i*) 2 Statutes 190 *et seq.*

(*k*) 13 Statutes 796.

(*l*) 2 Statutes 242.

(*m*) *Kemp v. Wickes* (1809), 3 Phillim. 264; 7 Digest 531, 113; *Titchmarsh v. Chapman* (1844), 1 Rob. Eccl. 175, at p. 182; 7 Digest 530, 106.

(*n*) *Escott v. Mastin* (1842), 4 Moo. P. C. C. 104; 7 Digest 531, 114.

to heretics, persons not receiving the Holy Sacrament at least at Easter, and to persons killed in duels, tilts and tournaments (o).

This right to Christian burial, however, does not mean a right to be buried *in* the church (p) (a privilege dependent upon a "faculty," though a right of burial in a church "may be prescribed as belonging to a messuage" (q)); nor does it include a right to be buried near relatives or in any particular part of the churchyard, nor to the erection of a monument or the construction of a vault. Furthermore, with regard to burials in churches, the Church Building Acts have imposed certain restrictions against disturbing the soil or pavements of churches, but for these reference must be made elsewhere (r). Subject to the permission of the incumbent and churchwardens, non-parishioners are frequently buried in a churchyard, but should such a practice result in hardship to parishioners by limiting the space available to them for sepulture, it might possibly be restrained by injunction (s). [600]

It is a misdemeanor to disinter a dead body without lawful authority, even for a "pious and laudable purpose" (t). A faculty is necessary for the removal of human remains from one consecrated place of burial to another. It is illegal to remove human bones from a churchyard without a faculty. Such "lawful authority" above mentioned would include a coroner's order for an inquisition or a licence of a Secretary of State (u). A faculty to disinter a corpse for the purpose of identifying it may be granted without waiting for a licence from the Home Secretary, but it cannot be carried into effect until such licence is obtained (a). [601]

The law does not require that interments should be made in any particular place, nor in any particular manner. No particular ceremony is now necessary; but the burial should be "decent," which is apparently all that is meant by "Christian" burial. It therefore follows that a burial is not unlawful in private ground, provided that the user of the ground for that purpose does not amount to a nuisance (b) and there is no infringement of a statutory prohibition against burial. Apart from nuisance, a disregard of decency would be a misdemeanor (c). It has been held, furthermore, that a body need not be buried in a coffin, though it should be carried to the grave "decently covered" (d). [602]

No person can by will, or otherwise, legally dispose of his body after death (there being no "property" in a corpse, though the shroud, etc., could be a subject of larceny). It follows that a testator's representatives can legally disregard any directions he might have given with regard to the disposal of his remains (e). In this connection it is curious to note that the Cremation Regulations provide some safeguard, though in a negative way, for it is unlawful to cremate the remains of

(o) See 1 Gib. Cod. 450.

(p) *Rich v. Bushnell* (1827), 4 Hag. Ecc. 164; 7 Digest 529, 95; *Rugg v. Kingsmill* (1867), 31 J. P. 644; 19 Digest 456, 3036.

(q) *Waring v. Griffiths* (1758), 1 Burr. 440; 7 Digest 528, 85.

(r) See 3 Halsbury (Hailsham ed.), p. 491.

(s) See Halsbury (2nd ed.), Vol. III., p. 467.

(t) *Reg. v. Sharpe* (1857), 26 L. J. M. C. 47; 7 Digest 521, 7.

(u) S. 25 of the Burial Act, 1857; 2 Statutes 236.

(a) See Brooke Little's *Law of Burials*, p. 9.

(b) *Cowley (Lord) v. Byas* (1877), 5 Ch. D. 944; 7 Digest 548, 272.

(c) *R. v. Price*, ante.

(d) *R. v. Stewart*, ante.

(e) *Williams v. Williams* (1882), 20 Ch. D. 659; 7 Digest 521, 8.

a person who is known to have left a written direction to the contrary (*f*). Again, the statutory application for cremation (*g*) provides an opportunity for near relatives to object to the proposed procedure, an action which the medical referee is bound to consider (*h*). [603]

But the personal representatives are required by sects. 7 and 8 of the Anatomy Act, 1832 (*i*), to give effect to any request made by a person, before his decease, that his body should not undergo an anatomical examination, or on the other hand to any direction given by him that such an examination should take place, but in this case subject to no objection being made by the widow or widower or the nearest known relative. [604]

The Development of the Policy of Burial Law in England.—In the reign of William IV., various cemetery companies were constituted by local Acts, and later the councils of certain boroughs obtained power by local Acts to provide cemeteries. The Cemeteries Clauses Act, 1847 (*k*), was passed for the purpose of shortening future local Acts authorising the provision of cemeteries. The first great Burial Act of 1852 (*l*), which applied only to London, followed, and was extended to England and Wales by the Burial Act of the following year, and made possible the provision of a burial ground for a parish by the mere passing of a resolution by the vestry. The group of Acts known as the Burial Acts, 1852 to 1906 (*l*), provide for the closing by Order in Council of over-full churchyards, and the discontinuance of burials therein, and finally put an end to a condition of things which, as far as city graveyards were concerned, was appalling. From the year 1852 the policy of the law regarding burials proceeds upon the lines of measures for the closing of insanitary and overcrowded burial grounds, the formulation by the H.O. (now the Minister of Health) of regulations regarding burials for the protection of the public health and the maintenance of public decency, the establishment of burial boards, the provision and maintenance of burial grounds for single and combined parishes, and the gradual transference of the duties and liabilities of the original burial boards to the councils of boroughs and urban districts and parish councils (*m*), and provision of mortuaries. Burial authorities are made responsible for the management and conduct of their burial grounds, the central authorities maintaining control by, *inter alia*, certain powers and duties imposed upon the Minister of Health and the H.O. (with regard to bye-laws, table of fees, etc.), and particularly by the system of compulsory registration of both deaths and burials (*n*) and the important and detailed statutory requirements connected with the procedure of burial. The old-time parish register of burials, liable to loss and destruction in various ways, is being replaced by records, uniformly made, painstakingly kept and carefully preserved, and available when needed, although, of course, the register of burials in the parish churchyard must still be kept. It may be observed here, with regard to regulations made by burial authorities, that those in use show certain variations. In many cases they are those which were originally approved by the Secretary of State at the time when the burial

(*f*) Cremation Regulations, 1930 ; S.R. & O., 1930, No. 1016, Art. 4.

(*g*) *Ibid.*, Schedule, Form A.

(*h*) *Ibid.*, Art. 12.

(*i*) 11 Statutes 659, 660.

(*k*) 2 Statutes 255.

(*l*) *Ibid.*, 190 *et seq.*

(*m*) See title BURIAL AUTHORITIES.

(*n*) See, for the law and practice of Registration, title BURIALS AND BURIAL GROUNDS.

ground was originally provided. Little change has been made in revised regulations for the last fifty years, though with regard to bye-laws concerning cemeteries under the P.H. (Interments) Act, 1879 (*o*), the M. of H. issue a model set (*p*). [605]

The policy and practice of providing for sanitary and decent burial is further exemplified by the passage of the P.H. (Interments) Act, 1879 (*q*), providing an alternative means by which a borough council or district council could establish a cemetery. The distinction between a cemetery under the 1879 Act and a burial ground under the Burial Acts is a purely legal one. The Act of 1879 made the provision of a burial place possible without reference to vestry, parish council or parish meeting, and a local authority providing a cemetery under this Act does not become a burial board, but the provision of and maintenance of a cemetery is added to their powers as a sanitary authority under the P.H.A. [606]

Miscellaneous Rights of Burial.—Mention has been made above of the effect of the Burial Laws Amendment Act, 1880 (*r*), on the procedure in the case of the burial of persons under ecclesiastical prohibition. The following cases of "irregular" burial should also be noticed. [607]

Murderers.—By the Capital Punishment Amendment Act, 1868, sect. 6 (*s*), it is provided that the body of every executed offender is to be buried within the walls of the prison where judgment of death was executed, but in the event of there being no convenient space therein, in some other fit place appointed by the Home Secretary in writing. [608]

Felo de se.—The old practice of burial in a highway and impaling with a stake was abolished in 1823 (*t*). Now suicides may be buried in any one of the ways prescribed or authorised by the Burial Laws Amendment Act, 1880 (*u*), and any form of orderly religious service may now be used except the burial service of the Church of England by a Minister of that Church (*a*). [609]

Drowned Persons.—The burial of drowned persons, found in or cast on shore by the sea or tidal or navigable waters, is regulated by the Burial of Drowned Persons Acts, 1808 (*b*), and 1886 (*c*). See also title CORPSES. [610]

Seamen.—The expenses of the burial of any master, seaman or apprentice dying as the result of an injury sustained in the service of his ship are defrayed by the owner of such ship without any deduction from wages due; otherwise (in the case of a natural death) reasonable expenses incurred can be deducted from the deceased's wages (*d*). [611]

Persons Dying of Infectious Disease.—The dead body of any person dying from an infectious disease must not, without the sanction of the M.O.H. in writing, or of a registered medical practitioner, be retained

(*o*) 13 Statutes 796.

(*q*) 13 Statutes 796.

(*s*) 4 Statutes 643.

(*u*) 2 Statutes 242.

(*a*) The Interments (Felo de se) Act, 1882; 2 Statutes 277.

(*b*) 2 Statutes 273.

(*c*) *Ibid.*, 279.

(*d*) See ss. 34, 35 of the Merchant Shipping Act, 1906, as amended by the Merchant Shipping Acts (Amendment) Act, 1923; 18 Statutes 459.

(*p*) Series XIV.

(*r*) 2 Statutes 242.

(*t*) By Stat., 4 Geo. 4, c. 52 (Felo de se).

unburied for more than forty-eight hours elsewhere than in a public mortuary or in a room not used at the time as a dwelling-place, sleeping-place or workroom (*e*). This is an adoptive section. (See title CORPSES.) Provision is made by the 1930 Cremation Regulations (*f*) for the cremation of a person dying of plague, cholera or yellow fever on board ship or in hospital or in a temporary place of reception. [612]

Stillborn Children.—It is an offence, under a penalty not exceeding £10 on summary conviction, for any person to bury or procure to be buried the body of a deceased child as though it were stillborn. No stillborn child may now be buried without a registrar's certificate or coroner's order (*g*), and cemetery regulations usually provide that the statutory certificate must be delivered to the superintendent of the cemetery when the body is left for interment, otherwise the body will not be allowed to be left. [613]

Cremation.—Though the procedure regarding cremation as at present practised in this country is controlled by the Cremation Act, 1902 (*h*), and regulations made under that Act (*i*), its legality follows from the famous judgment of Sir JAMES FITZJAMES STEPHEN in *R. v. Price* (*k*), that the burning of a dead human body is not unlawful provided it is so conducted as not to be a nuisance at common law. This judgment and that in *R. v. Stephenson* (*l*), that a burning is unlawful if performed for the purpose of preventing a coroner from holding an inquest, paved the way for the practice of cremation. Several private crematoria were erected as a result, but the 1902 Act is noteworthy by reason of the fact that it allows a crematorium to be established by any burial authority or any cemetery authority by whom a cemetery has been provided under the P.H. (Interments) Act, 1879, or under a local Act. [614]

Owing to the danger that cremation may destroy evidence of a possible crime an elaborate procedure peculiar to this method of disposal of the dead body has been prescribed (*m*). For this procedure and for the powers of providing and operating crematoria and restrictions thereon, see the title CREMATION. [615]

(*e*) See the Infectious Disease (Prevention) Act, 1890, s. 8 ; 13 Statutes 820.

(*f*) 1930, S.R. & O., No. 1016, Art. 14.

(*g*) Births and Deaths Registration Acts, 1874, s. 18 ; 1926, s. 15 ; 15 Statutes 742, 770 ; and the Registration (Births, Stillbirths, Deaths and Marriages) Consolidated Regulations, S.R. & O., 1927, No. 485.

(*h*) 2 Statutes 281.

(*i*) The 1930 Regs. (*supra*) are the latest.

(*k*) (1884), 12 Q. B. D. 247 ; 7 Digest 563, 330.

(*l*) (1884), 13 Q. B. D. 331 ; 7 Digest 563, 331.

(*m*) See Cremation Regulations, S.R. & O., 1930, No. 1016.

BURIAL AUTHORITIES

DEFINITION OF "BURIAL AUTHORITY"	PAGE	(2) An Urban District Council	PAGE
FUNCTIONS OF BURIAL AUTHORITIES	314	(3) A Borough Council	316
DESCRIPTIONS OF BURIAL AUTHORITIES	315	(4) A Parish Council	317
(1) The Burial Board	316	(5) A Joint Committee	317
		CEMETERY AUTHORITIES	317
		LONDON	317

See also titles :

BURIALS AND BURIAL GROUNDS ; BURIAL AND CREMATION ; * CEMETERIES ; CONSECRATION ;	CORPSES ; CREMATION ; DISUSED BURIAL GROUNDS ; VESTRY.
--	---

* For practice from point of view of private persons.

Definition of "Burial Authority."—There are two distinct codes of law governing the provision by public authorities of burial grounds or cemeteries : (1) the Burial Acts, 1852 to 1906 (*a*), which originally were administered by burial boards appointed for the purpose ; and (2) the P.H. (Interments) Act, 1879 (*b*), applying the Cemeteries Clauses Act, 1847, which is administered by borough and district councils. To avoid confusion, a ground for burials provided under the Burial Acts is generally referred to as a burial ground, and a ground for burials provided under the Act of 1879 is usually called a cemetery. Similarly the authorities for the execution of the two groups of Acts are often distinguished by referring to them as burial authorities and cemetery authorities respectively.

During the last quarter of the nineteenth century, the legislature adopted a policy of providing for the abolition of the numerous classes of *ad hoc* authorities which existed, and for the transfer of their powers and duties to the borough council, district council or parish council. But in a borough or urban district, the abolition of an existing burial board depended on the adoption by the council of a resolution taking over the powers and duties of the burial board, and a certain number of burial boards still exist, who usually act for the whole or a portion of a borough or urban district.

As it was desired that the provisions of the Burial Act, 1900 (*c*), should extend to cemetery authorities as well as burial authorities, and also to authorities who had provided a cemetery under a local Act, the term "burial authority" was defined in sect. 11 of that Act as meaning "any burial board, any council, committee or other local authority having the powers and duties of a burial board, and any local authority maintaining a cemetery under the P.H. (Interments)

(*a*) 2 Statutes 190 *et seq.*

(*b*) 13 Statutes 796.

(*c*) 2 Statutes 248.

Act, 1879, or under any local Act," an exactly similar definition being given by the Cremation Act, 1902 (*d*), for the purposes of that Act. [616]

Functions of Burial Authorities.—The function of the burial authority strictly so called is to carry into execution the provisions of the Burial Acts, 1852 to 1906 (*e*), whether the authority be the burial board originally appointed by resolution of the vestry (*f*) or a local authority to which has been transferred the powers and duties of a burial board, for as already explained the functions of a burial board may now be vested in a variety of bodies, ranging from a parish council to a borough council, all being executive authorities for the purposes of the Burial Acts. It might be mentioned here that not only may a borough council or U.D.C. be invested with the powers of a burial board in the ways indicated later in this article, but occasionally such councils may possess the functions of a burial board by virtue of provisions in local Acts, or even a statutory order dealing with local boundaries. [617]

It is the duty of a burial authority under the Burial Acts, 1852 to 1906 (*e*):

- (1) To provide a burial ground for its area by purchase, or contract with cemetery owners for the same purpose. The earlier Burial Acts provided for the establishment of a burial ground for the civil parish, the later Acts for ecclesiastical and other areas not being civil parishes in like manner as for civil parishes. The burial board may provide more than one burial ground, with the approval of the Minister of Health (*g*).
- (2) To arrange, in accordance with statutory requirements, for the necessary finance in regard to the provision of a burial ground, to enter into necessary contracts, keep minutes of proceedings, and to appoint officers and servants.
- (3) To provide for the general management, regulation and control of the burial ground or grounds, in the manner laid down by the Burial Acts or any regulations thereunder.
- (4) To apply, if thought fit, for the bishop to consecrate a portion of the burial ground and provide for the erection of a chapel or chapels (*h*).
- (5) To arrange for a table of fees for interments, etc. (*i*), subject to the approval of the M. of H.
- (6) To submit for H.O. approval a table in respect of fees to be received for services rendered by a minister of religion (*k*).
- (7) To make arrangements for the carrying out of statutory requirements with regard to registration of burials, graves, etc. (*l*).

The consent of the vestry had in some instances to be obtained, but in a borough or urban district the civil powers of the vestry are now transferred to the borough council or U.D.C. by sect. 269 of the L.G.A., 1933 (*m*). [618]

(*d*) 2 Statutes 281.

(*e*) *Ibid.*, 190.

(*f*) Burial Act, 1852; Burial Act, 1853; 2 Statutes 190, 210.

(*g*) Burial Act, 1857, s. 3; 2 Statutes 227; M. of H. Act, 1919, s. 3; 3 Statutes 417.

(*h*) Burial Act, 1900, ss. 1, 2; 2 Statutes 248, 249.

(*i*) Burial Acts, 1852, s. 34; 1855, s. 7; *ibid.*, 202; *ibid.*, 220; 1900, s. 12; and M. of H. Act, 1919, s. 3; 3 Statutes 417.

(*k*) Burial Act, 1900, s. 3; 2 Statutes 249.

(*l*) See title BURIALS AND BURIAL GROUNDS.

(*m*) 26 Statutes 449.

Descriptions of Burial Authorities.—Generally (outside the Metropolis) the powers and duties of a burial authority can be exercised by :

- (1) A burial board.
- (2) An U.D.C.
- (3) A borough council.
- (4) A parish council.
- (5) A joint committee. [619]

(1) *The Burial Board* is the creation of the Burial Act, 1852 (*n*), and administers that Act and the amending Acts of 1853, which extended the provisions of the 1852 Act beyond the limits of the Metropolis; 1854; 1855; 1857; 1859; 1860; 1871; 1880; 1900; and 1906. [620]

(2) *An U.D.C.* may be invested (though with variations) with the functions of a burial board in the following ways :

- (i.) by Order in Council under sect. 4 of the Burial Act, 1857 (*o*) ;
- (ii.) under sect. 49 of the L.G.A., 1858, as re-enacted by sect. 343 and Sched. V. of the P.H.A., 1875 (*p*), by a resolution of the vestry (*q*), constituting the council a burial board instead of electing a separate burial board ;
- (iii.) under sect. 44 of the Sanitary Act, 1866 (29 & 30 Vict. c. 90), re-enacted by the P.H.A., 1875, sect. 343 and Sched. V. which provides for the transfer (*p*) of the powers of the burial board by a resolution of the vestry, with the agreement of the council and the burial board ;
- (iv.) under sect. 62 of the L.G.A., 1894 (*r*) ; and
- (v.) under the provisions of a local Act or a statutory Order dealing with local authorities.

NOTE.—By sect. 62 of the L.G.A., 1894, a borough council or U.D.C. were allowed, by resolution, to take over the powers and duties of any burial board acting for the whole or part of their area. See, for the full changes brought about by the 1894 Act, Lumley's Public Health and the introduction to Brooke Little's Law of Burials, 3rd Ed., pp. 101—106. [621]

(3) *A Borough Council* may be invested with the powers of a burial board by an Order in Council under sect. 1 of the Burial Act of 1854 (*s*). It should be noted that by sect. 2 of this Act, the borough council is to be a burial board. The Act further provided for the payment of expenses out of the borough fund and borough rate (sect. 3), borrowing (sects. 4, 5), and conveyances and sales of land (sect. 6), all of which matters are now provided for, as respects local authorities (except burial boards elected as such) in the L.G.A., 1933, Parts VII., VIII. and IX. (*t*), and most of these sections of the Act of 1854 are accordingly repealed.

In addition, the procedure indicated in paras. (iii.) to (v.) above is available in boroughs as well as urban districts. [621A]

(*n*) For text of the Act of 1852 and amending Acts, see 2 Statutes 190 *et seq.*

(*o*) 2 Statutes 228. For petition, see Encyclopædia of Forms, 2nd ed., Vol. II., p. 579.

(*p*) 13 Statutes 765, 781. By s. 269 of the L.G.A., 1933; 26 Statutes 449, the functions of the vestry, except so far as they relate to the affairs of the Church or to charities, are transferred to the borough council or U.D.C.

(*q*) As to vestry, see that title.

(*s*) 2 Statutes 214.

(*r*) 10 Statutes 816.

(*t*) 26 Statutes 391, 404, 412.

(4) *A Parish Council*.—By sect. 7 (1) of the L.G.A., 1894 (*u*), the parish meeting has the exclusive power of adopting the Burial Acts, 1852 to 1906, in a rural parish in lieu of the vestry. The power is to be exercised by the parish meeting passing a resolution to provide a burial ground (sect. 7 (8)). After the passing of the resolution, no burial board need be elected, as, by sect. 7 (7), the parish council will be the burial board if the parish has a parish council, and that whether the Burial Acts were adopted for the whole or a part only of the parish. If, however, the rural parish has not a parish council the better course is to refrain from adopting the Burial Acts, and to ask the R.D.C. to provide a cemetery for the parish under the P.H. (Interments) Act, 1879 (*a*) (see below), the expenses to be defrayed as special expenses chargeable to the parish or parishes for which the cemetery is provided. Alternatively it would seem that a burial board might be appointed by the parish meeting, or an application made to the county council for an order establishing a parish council for the parish under sect. 43 of the L.G.A., 1933 (*b*). [622]

(5) *A Joint Committee*.—Sect. 53 of the L.G.A., 1894 (*c*), provides for the exercise by a joint committee of the functions of a burial board in a case where the area under that body is neither co-extensive with, nor comprised within, a single rural parish. The Local Government (Joint Committees) Act, 1897 (*d*), contains provisions with regard to the appointment, status and borrowing powers of these joint committees, while the 1894 Act provides, *inter alia*, for the transfer of property and debts of existing burial boards on the change-over being effected (*e*). [623]

Cemetery Authorities.—Any borough council, or U.D.C. or R.D.C. may provide a cemetery under the P.H. (Interments) Act, 1879 (*f*), which incorporates the provisions of the Cemeteries Clauses Act, 1847 (*g*), without reference to vestry, parish council or parish meeting. A local authority using this alternative scheme for supplying a burial ground for its district would not function as a burial board, though the provisions of the Burial Act, 1900 (*h*), apply equally to burial boards under the Burial Acts and to cemetery authorities under the 1879 Act. Certain other provisions of the Burial Acts (*e.g.* sect. 7 of the Burial Act, 1853, dealing with the allotment of unconsecrated land) are applied also to cemeteries by the 1900 Act.

Further as to cemeteries, see the title CEMETERIES.

In concluding this article it might be mentioned that in 1927 there were in England 115 burial areas under specially elected burial boards, 167 under borough councils, 199 under urban district councils, 235 controlled by joint committees, 736 under parish councils and 28 under parish meetings. [624]

London.—The provision of burial grounds and cemeteries for London is in the hands of the local authorities and of private companies. The powers of the former are derived from the Burial Acts, 1852—1906 (*i*), and of the latter from private Acts. The Burial Acts may be put in

(*u*) 10 Statutes 779.

(*b*) 26 Statutes 326.

(*d*) 2 Statutes 280.

(*f*) 13 Statutes 796.

(*h*) *Ibid.*, 248.

(*a*) 13 Statutes 796.

(*c*) 10 Statutes 810.

(*e*) S. 67 of the 1894 Act.

(*g*) 2 Statutes 255.

(*i*) *Ibid.*, 190 *et seq.*

force, in the whole or a part of a metropolitan borough, by a resolution of the council. In the City of London, the common council act as a burial board under sect. 43 of the Burial Act, 1852 (*k*), and the City of London (Burial) Act, 1857 (*l*).

The Government own Brompton Cemetery and the Royal Naval Cemetery at Greenwich.

In the City of London and in 20 of the metropolitan boroughs the Burial Acts are in force in the whole or part of the area, and in 8 boroughs, viz. Bermondsey, Bethnal Green, Chelsea, Hackney, Holborn, Poplar, Southwark and Stepney, the Acts are not in force. Three of the councils of boroughs in which the Acts are in force, viz. Finsbury, Shoreditch and Stoke Newington, have not yet incurred any expenditure thereunder. [625]

The P.H. (Interments) Act, 1879 (*m*), does not extend to London.

The City of London Corpn. have a crematorium at Ilford, but no metropolitan borough council has as yet provided one. Crematoria have been established at Golders Green and Woking by the London Cremation Society and at West Norwood by the South Metropolitan Cemetery Company.

(*k*) 2 Statutes 204.

(*l*) *Ibid.*, 225. The power to appoint a chaplain contained in the Cemeteries Clauses Act, 1847, ss. 27 to 31; 2 Statutes 261; is by the City of London (Various Powers) Act, 1933, s. 11 (23 & 24 Geo. 5, c. xxiii.), incorporated with the Act of 1857.

(*m*) 13 Statutes 796.

BURIALS AND BURIAL GROUNDS

	PAGE		PAGE
INTRODUCTORY - - - -	320	B. Burial Grounds under the	
1. ADOPTION OF THE BURIAL ACTS	320	Burial Acts - - - -	335
Boroughs and Urban Districts -	321	C. Government Control and	
Rural Parishes - - - -	322	Supervision of Burial	
2. ACQUISITION OF BURIAL		Grounds - - - -	336
Grounds - - - -	323	D. Practical Administration of a	
Private Burial Grounds - - -	323	Burial Ground - - - -	336
Extension of the Churchyard -	324	The Statutory Records - -	337
Under the Burial Acts - - -	324	(i.) Grave Plan - - - -	337
A. Elective Burial Boards in		(ii.) Register of Graves - -	337
Boroughs and Urban Dis-		(iii.) Register of Burials -	338
tricts - - - -	325	Other Useful Forms - - -	339
(i.) Expenditure - - - -	325	Burial Ground Regulations -	339
(ii.) Alienation of Lands -	325	The Burial Service - - -	340
(iii.) Restriction on Use of		Fees - - - -	340
Land by the Burial Act,		4. THE PRACTICE AND PROCEDURE	
1906 - - - -	326	OF BURIAL, INCLUDING REGIS-	
(iv.) Rateability - - - -	326	TRATION - - - -	342
(v.) Consecration - - - -	326	A. Without Reference to	
(vi.) Finance - - - -	327	Coroner - - - -	342
B. Borough Council acting as		(a) Medical Certificate - -	342
Burial Board - - - -	327	(b) Registration - - - -	342
C. U.D.C. acting as Burial		(c) Burial - - - -	343
Board - - - -	329	(d) "Irregular" Certification	344
D. Parish Council acting as		B. With reference to Coroner :	
Burial Board - - - -	329	Registration of Stillbirths	
E. Joint Burial Committees for		and Deaths - - - -	344
Area Extending into (a)		(a) Registration in Cases	
more than one Rural Parish,		where Inquest Held - -	345
or (b) an Urban and a Rural		(b) Certificates for Disposal -	346
Parish - - - -	331	5. BURIAL OF THE POOR - -	347
Note on the Selection of a Site		The Poor Law Act, 1930 -	347
for a New Burial Ground or		Expenses of Burial - - -	348
Cemetery - - - -	332	6. BURIAL OF ASHES AFTER CRE-	
3. MANAGEMENT OF BURIAL		MATION - - - -	348
Grounds - - - -	332	7. PURCHASE AND TRANSFER OF	
A. The Parish Churchyard -	332	RIGHTS OF BURIAL - - -	349
Registration of Burials in a		FORMS - - - -	350
Churchyard - - - -	334	LONDON - - - -	352

See also titles :

BURIAL AND CREMATION ; *
 BURIAL AUTHORITIES ;
 CEMETERIES ;
 CEMETERY SUPERINTENDENT ;
 CONSECRATION ;

CORPSES ;
 CREMATION ;
 DISUSED BURIAL GROUNDS ;
 MORTUARIES ;
 OPEN SPACES.

[NOTE.—Occasional references have been made in this Article to Brooke Little's Law of Burials (3rd ed.), but such have been limited to matters concerning which rather more detailed information might prove helpful to the reader.]

* For practice from point of view of private individuals.

Introductory.—The subject-matter of the following article is chiefly abstracted from the group of Acts known as the Burial Acts, 1852—1906 (*a*). Cemeteries provided by a borough council under the P.H. (Interments) Act, 1879 (*b*), or by a district council under that Act, and cemeteries provided by cemetery companies are dealt with in the title CEMETERIES.

1. ADOPTION OF THE BURIAL ACTS

The Burial Acts are classed as adoptive Acts (*c*), although in reality they contain no provision for their adoption. The Acts are set in motion by an initial resolution to provide a burial ground, and this process is called in the L.G.A., 1894 (*d*), the “adoption of the Burial Acts.” [626]

Under sect. 10 of the Burial Act, 1852 (*e*), and later enactments, a special resolution to provide a burial ground for the parish was passed by the vestry. A burial board was then elected by the vestry (*f*), and by sect. 23 of the same Act, the vestries of two or more parishes are able to join in the provision of a common burial ground and elect a joint burial board. In the case of parishes and other areas in rural districts, the power of adoption was transferred from the vestries to parish meetings by the L.G.A., 1894 (*g*). In boroughs and urban districts, the functions and liabilities of the vestry, or of any meeting of inhabitants in the nature of a vestry, of every parish or place within the borough or urban district, except so far as they relate to the affairs of the church or to charities, are transferred as from June 1, 1934, to the borough council or U.D.C. by sect. 269 of the L.G.A., 1933 (*h*). By the same section, the functions and liabilities of the churchwardens of every parish within a borough or urban district, except so far as they relate to the affairs of the Church or to charities, are also transferred to the council. [627]

A resolution to provide a burial ground could be adopted by the vestry, or by a meeting in the nature of a vestry meeting, for the following areas, subject, however, as shown below to the consent, in certain instances, of the M. of H. :

- (i.) A parish as defined by sect. 68 (4) of the R. & V.A., 1925 (*i*).
 - (ii.) Two or more parishes united for ecclesiastical purposes or with a joint church or burial ground or for which the inhabitants have been accustomed to meet in one vestry for common purposes (*k*).
 - (iii.) A parish, township or other district, which has heretofore had a separate burial ground, but is not a poor law parish (*l*).
 - (iv.) An area as above with no separate burial ground (*m*).
 - (v.) The remainder of a parish as defined by sect. 68 (4) of the R. & V.A., 1925, for part of which a burial board has been appointed (*n*).
- [628]

(a) 2 Statutes 190 *et seq.*

(b) 13 Statutes 796.

(c) See title ADOPTIVE ACTS.

(d) S. 7 ; 10 Statutes 779.

(e) 2 Statutes 192.

(f) For the powers and duties of a burial board, see title BURIAL AUTHORITIES.

(g) See pp. 322, 323, *post*.

(h) 26 Statutes 449.

(i) 14 Statutes 688, and see Burial Act, 1852, ss. 10, 11 ; 2 Statutes 192.

(k) Burial Act, 1855, s. 11 ; 2 Statutes 221. See also *R. v. Coleshill Overseers* (1864), 34 L. J. (Q. B.) 96 ; 7 Digest 541, 212.

(l) *Ibid.*, s. 12 ; 2 Statutes 222.

(m) Burial Act, 1857, s. 5 ; 2 Statutes 228.

(n) See *Viner v. Tonbridge Churchwardens* (1859), 23 J. P. 773 ; 7 Digest 541, 203.

In the following cases the consent of the M. of H. is necessary :

(vi.) Two or more parishes united for ecclesiastical purposes, or which have had a common church or burial ground, or the inhabitants of which have been accustomed to meet in one vestry, if any one of such parishes is a parish as defined by sect. 68 (4) of the R. & V.A., 1925 (*nn*), or has a separate burial ground (*o*).

(vii.) Any parish (as defined above) or place divided into two or more districts for all or any ecclesiastical purposes, if any one has a separate burial ground (*p*).

In cases (vi.) and (vii.), the resolution of the meeting must be sent to the Minister for his approval before the burial board is appointed, and he may attach certain conditions before giving such approval (*q*).

[629]

Boroughs and Urban Districts.—As already explained, any resolution to provide a burial ground for a parish in a borough or urban district will in future be adopted by the borough or district council instead of the vestry. By sect. 62 (2) of the L.G.A., 1894 (*r*), it had already been provided that the Burial Acts should not be adopted for any part of a borough or urban district without the approval of the council. This provision not only covers the adoption of the Acts for any area in the borough or urban district which is a parish (as defined above), but any other area therein. Borough councils and urban district councils have, therefore, a complete control over the adoption of the Burial Acts, within the areas for which they act.

Technical difficulties in the adoption of the Burial Acts for a special area in a borough or urban district are often obviated by a decision of the council to provide a cemetery under the P.H. (Interments) Act, 1879 (*s*), instead of proceeding under the Burial Acts.

The desirability of adopting the Burial Acts for an area within a borough or urban district usually arises through the receipt from the M. of H. of notice that he proposes to make a representation to His Majesty in Council under sect. 1 of the Burial Act, 1853 (*t*), that an existing churchyard is overcrowded and should be closed for burials. Should it be decided to proceed under the Burial Acts, rather than the P.H. (Interments) Act, 1879, the question of adopting the Burial Acts for any area within a borough or urban district (that is to say, of passing a resolution in favour of the provision of a burial ground for that area) after June 1, 1934 (the date of the coming into operation of the L.G.A., 1933), devolves on the council, as the successors of the vestry or vestries.

In the remainder of this article, the position will be described after the coming into operation of the L.G.A., 1933 (*u*). [630]

It seems desirable, in view of the requirement in sect. 10 of the Burial Act, 1852 (*a*), that 7 clear days' notice of the meeting of the council should be given, although under para. 2 of Parts II. and III. of Sched. III. to the L.G.A., 1933 (*b*), 3 clear days' notice of an ordinary meeting of a borough or district council is alone necessary. If it be resolved at the meeting that a burial ground be provided, a copy of

(*nn*) 14 Statutes 688.

(*o*) Burial Act, 1857, s. 9 ; 2 Statutes 231.

(*p*) Burial Act, 1860, s. 4 ; 2 Statutes 240.

(*q*) Burial Act, 1871, s. 1 ; 2 Statutes 241.

(*r*) 10 Statutes 816.

(*t*) 2 Statutes 210.

(*a*) 2 Statutes 193.

(*s*) 13 Statutes 796.

(*u*) 26 Statutes 295.

(*b*) 26 Statutes 497, 498.

the resolution signed by the chairman of the meeting must be sent to the M. of H. (c). [631]

Only ratepayers of the parish (that is, persons assessed to and paying poor rates of the parish, occupiers whose rates are paid by the owner of the property or in lieu of whom the owner is rated, or owners paying rates in lieu of the owner by agreement (d)), may be appointed members of the burial board for that parish, an exception being made in the case of the incumbent, who need not be a ratepayer (e). One-third of the members (or as nearly as may be) retire yearly at such time as is decided upon by the borough council or U.D.C., retiring members being eligible for re-appointment, and the resignation of any member taking effect upon notice being given to that effect to the borough council or U.D.C.

A vacancy in the board is to be filled up within one month from its occurrence, and notification of it must be sent immediately to the council. The vacancy may be filled by the burial board itself at any meeting, should there be neglect on the part of the council to fill the vacancy. Should the board make no appointment, an election by the council is good even after the expiration of the one month (f). Only ratepayers are eligible to fill vacancies, but although sect. 4 of the Burial Act, 1855 (g), made no exception in favour of a non-ratepayer incumbent proposed for a vacancy, it is presumed that, as he is eligible for an original appointment by the proviso to sect. 11 of the 1852 Act, that proviso would be read into the present section. The power of the burial board to act is not nullified by vacancies thereon, provided there be present the necessary quorum of three (h). [632]

When members of a burial board were appointed or vacancies filled at vestry meetings, a poll of the ratepayers could be demanded, and the Burial Boards (Contested Elections) Act, 1885 (i), authorised the expenses of any such poll to be defrayed by the burial board. Although the Act is not repealed by the L.G.A., 1933, it would appear that no poll can be demanded, where members of a burial board are first appointed, or vacancies are filled, by the council of a borough or urban district, and that the Act of 1885 will become obsolete. [633]

In furtherance of the policy adopted in the L.G.A., 1894, of abolishing special authorities for the purposes of the adoptive Acts, such as burial boards, the council of any borough or urban district may by a resolution passed under sect. 62 of that Act (k) abolish any burial board acting for the whole or part of their borough or urban district and transfer to themselves the powers, duties, property, debts and liabilities of the burial board. The section does not apply, however, where a part of the district of the burial board extends beyond the borough or urban district. [634]

Rural Parishes.—In a rural parish, the power of adopting the Burial Acts, or in other words the power of resolving that a burial ground be provided, was by the L.G.A., 1894, transferred from the vestry to the parish meeting (l). If it should be desired to adopt the Burial Acts for a part only of a rural parish, the question would be considered at a

(c) See s. 10 of the Burial Act, 1852; s. 4 of the Burial Act, 1900; 2 Statutes 192, 251.

(d) R. & V.A., 1925, s. 11 (7); 14 Statutes 635.

(e) Burial Act, 1852, s. 11; 2 Statutes 193.

(f) *R. v. South Weald Overseers* (1864), 5 B. & S. 391; 7 Digest 542, 215.

(g) Burial Act, 1855, s. 4; 2 Statutes 219.

(h) Burial Act, 1852, s. 14; 2 Statutes 194.

(k) 10 Statutes 816.

(i) 2 Statutes 247.

(l) S. 7 (1); 10 Statutes 779.

parish meeting of the electors of that part of the parish (*m*), subject to the consent of the M. of H. where such consent is required by the Acts. It is suggested that the provisions of the L.G.A., 1894, as to the adoptive Acts, preclude the adoption of the Burial Acts for an area extending beyond the limits of a rural parish (*n*).

The procedure for the adoption of the Burial Acts in rural areas is as follows: Not less than fourteen days' notice must be given of the parish meeting at which the proposal of adoption is to be considered (*o*); under the L.G.A., 1894, a poll of the electors could be demanded by one elector, but this will be altered by the L.G.A., 1933 (*p*), so as to provide that a poll shall not be taken, unless either the chairman of the meeting consents, or the demand is made by not less than 5, or one-third, of the electors present at the meeting, whichever is the less. A simple majority, either at a parish meeting or poll, is sufficient to carry the resolution, as in the case of the vestry. The resolution should strictly take the definite form "that a burial ground be provided," but a resolution to "adopt the Burial Acts," would probably be effective. The resolution having been duly carried, a copy must be forwarded to the M. of H. (*q*). The expenses of a poll consequent on a parish meeting are chargeable separately upon the parish, even although the poll was held for a part only of the parish (*r*). In a parish having a separate parish council such expenses are paid by the parish council. Expenses of parish councils and parish meetings are dealt with in sect. 193 of the L.G.A., 1933, in which section a limit is fixed (subject to revision by the Minister) to the sums that may be raised for expenditure other than under the adoptive Acts, in the case of parishes having a parish council and in the case of parishes not having a parish council including expenditure under the adoptive Acts, but nothing in that section is to alter the incidence of charge of any rate levied to defray expenses incurred under any of the adoptive Acts.

Where the Burial Acts are adopted for the whole or part of a rural parish, and the parish has a parish council, a burial board is not appointed, but the parish council become the authority for carrying the Burial Acts into execution (*s*). There would be difficulties in executing the Acts, if the Acts were adopted for a rural parish without a parish council, and it would be preferable either for application to be made to the county council to establish a parish council under sect. 43 of the L.G.A., 1933, or to the R.D.C. to provide a cemetery for the parish under the P.H. (Interments) Act, 1879. [635]

2. THE ACQUISITION OF BURIAL GROUNDS

Private Burial Grounds.—Dead bodies may be buried in any private burial ground outside the Metropolis or a limit of two miles therefrom provided no nuisance is thereby created, and there is no Order in Council in force prohibiting burials in the parish in which such ground is situate. It has been suggested (*t*) that such a ground, being a burial

(*m*) S. 7 (4); 10 Statutes 779.

(*n*) 3 Halsbury (Hailsham ed.), 550.

(*o*) L.G.A., 1933, Sched. III., Part VI., para. 2 (2); 26 Statutes 502.

(*p*) Sched. III., Part VI., para. 5 (4); 26 Statutes 503.

(*q*) S. 10 of the Burial Act, 1852, as amended by s. 4 of the Burial Act, 1900; 2 Statutes 192, 251; and the M. of H. Act, 1919, s. 3; 3 Statutes 417.

(*r*) L.G.A., 1933, s. 193; 26 Statutes 411.

(*s*) L.G.A., 1894, s. 7 (7); 10 Statutes 779.

(*t*) Brooke Little, Law of Burials, 3rd ed., 386.

ground, would be subject to the provisions of the Registration of Burials Act, 1864 (*u*), as far as possible, and a register, etc., provided. Furthermore, it has been held (*a*) that a private burial ground provided within an area subject to such an Order in Council, after approval by the Secretary of State, is subject to the provisions of the Burial Acts.

Though a discussion of the matter is outside the present article, it might be mentioned here that Orders in Council for the discontinuance of burials under sect. 2 of the 1852 Burial Act, are not to extend to any burial ground "of the people called Quakers, or of the persons of the Jewish persuasion," used solely for the burial of the bodies of such people and persons respectively, unless the same be expressly mentioned in such order, and nothing in that Act shall prevent the burial in any such burial ground in which for the time being interment is not required to be discontinued, of the bodies of such people and persons respectively (*b*). Neither shall such Order in Council be deemed to extend to any non-parochial burial ground being the property of a private person, unless the same be expressly mentioned in such order (*b*). [636]

Cemeteries owned by cemetery companies are dealt with in the title CEMETERIES.

Extension of the Churchyard.—An ecclesiastical corpn., aggregate or sole, may by deed enrolled sell any land adjacent to any cemetery or burial ground, not exceeding one acre, subject to certain requirements (*c*), while the group of Acts known as the Church Building Acts (*d*) contain detailed provisions as to the acquisition of lands for churchyards similar to those to be found in the Lands Clauses Acts. They contain powers for compulsory purchase, provide for gifts of land, and empower the Ecclesiastical Commissioners (*inter alia*) to provide a churchyard, including proper access thereto. A statutory form of conveyance is provided under the Acts (*e*), and such a conveyance is exempted from stamp duty (*f*). Lands conveyed under these Acts are to be consecrated, after which they vest in the incumbent.

Provisions for grants of land for churchyards are also to be found in the School Sites Acts, 1841 and 1849 (*g*), as extended by the Consecration of Churchyards Acts, 1867 and 1868 (*h*). Grants of land for the provision of a burial place may also be made under the Places of Worship Sites Act, 1873 (*i*), and the amending Act of 1882 (*j*). In the case of grants by an ecclesiastical corpn. sole below the dignity of bishop, the consent of the bishop is necessary. Treasury consent is required in the case of a municipal corpn., and that of the M. of H. where parochial property is alienated. [637]

Under the Burial Acts.—*I.e.* by burial boards and authorities entrusted with the carrying out of the provisions of the Burial Acts (*k*). [638]

(*u*) 2 Statutes 276.

(*a*) *Greenwood v. Wadsworth* (1873), L. R. 16 Eq. 288; 7 Digest 548, 271. But see also comments on this decision in Brooke Little's Law of Burials, 3rd. ed., p. 208.

(*b*) Burial Act, 1852, s. 3; 2 Statutes 191.

(*c*) Burial Ground Act, 1816; 6 Statutes 697.

(*d*) 1818—1884; 6 Statutes 155, 698 *et seq.* See Halsbury's Laws of England (2nd ed.), Vol. II., title "Ecclesiastical Law."

(*e*) Church Building Act, 1822, s. 2; 6 Statutes 747.

(*f*) *Ibid.*, s. 28; 6 Statutes 758.

(*g*) 7 Statutes 275, 284.

(*h*) 6 Statutes 886 *et seq.*

(*i*) *Ibid.*, 1238 *et seq.*

(*j*) *Ibid.*, 1241.

(*k*) See title BURIAL AUTHORITIES.

- A. *Elective Burial Boards in Boroughs and Urban Districts.*
- B. *Borough Council acting as a Burial Board.*
- C. *U.D.C. acting as a Burial Board.*
- D. *Parish Council acting as a Burial Board.*
- E. *Joint Burial Committee for Area Extending into (a) more than one Rural Parish ; or (b) an Urban and a Rural Parish.*

A. *Elective Burial Boards in Boroughs and Urban Districts.*—It has already been explained (*l*) that before a burial ground could be provided by a burial board, the Burial Acts have first to be “adopted” by the passing of the statutory resolution. The burial board duly appointed is a body corporate by the name of “The Burial Board for the parish of _____, in the county of _____.” By that name it has perpetual succession and a common seal, may sue and be sued, and acquire and hold lands for the purposes of the Burial Acts without licence in mortmain (*m*).

The duty of the burial board on its appointment is to proceed with all speed to provide a burial ground for its area. It must take into account convenience of access, and the ground may be either within or outside the burial area (*n*): it may, subject to the approval of the M. of H., provide more than one burial ground (*o*). With the consent of the borough or U.D.C. it may enter into an agreement to purchase any lands convenient for its purpose; it may purchase from a cemetery company (*p*) any cemetery or part of a cemetery, or may contract with a cemetery company for the reception of bodies. This last course is, however, rarely adopted. The power of purchasing land can only be exercised by agreement, and a burial board has no power of buying land compulsorily (*q*). [639]

(i.) *Expenditure.*—Should the council refuse or neglect to sanction the expenditure decided upon by the burial board for the purpose of providing a burial ground (or a chapel thereon), the Minister of Health is empowered to dispense with this sanction. He may take similar action as regards the borrowing of money, the purchase of lands and the provision of a mortuary (*r*). After an inquiry, if the Minister is satisfied that the burial board is unable to proceed in its duties owing to the aforesaid refusal or neglect, he is empowered to authorise the board to expend such sums as are necessary for providing and laying out the burial ground. [640]

(ii.) *Alienation of Lands.*—A burial board may, subject to the approval of the borough or U.D.C., sell and dispose of any lands purchased under the Burial Acts, and use the sums so obtained for the purposes of those Acts (*s*), subject to the statutory requirements as to the form of conveyance to be used and the receipt for the purchase money (*t*).

(*l*) See *ante*, p. 320, “Adoption of the Burial Acts.”

(*m*) Burial Act, 1852, s. 24; 2 Statutes 198.

(*n*) *Ibid.*, s. 25.

(*o*) Burial Act, 1857, s. 3; 2 Statutes 227; M. of H. Act, 1919, s. 3; 3 Statutes 417.

(*p*) Burial Act, 1852, s. 26; 2 Statutes 198. For a form of Agreement to Purchase, see *Encyclopædia of Forms*, 2nd ed., Vol. II., p. 587; and for Purchase, *ibid.*, p. 596.

(*q*) *Ibid.*, s. 27; 2 Statutes 199.

(*r*) Burial Act, 1855, s. 6; 2 Statutes 220; Burial Act, 1900, s. 4; *ibid.*, 251; M. of H. Act, 1919, s. 3; 3 Statutes 417.

(*s*) Burial Act, 1852, s. 28; 2 Statutes 199.

(*t*) *Ibid.*, s. 28. See also the Lands Clauses Consolidation Act, 1845, s. 132; 2 Statutes 1160.

A burial board, too, may with the approval of the M. of H., let on lease any superfluous land purchased by it under the Burial Acts, provided such land has not been consecrated, nor any interment made therein, and the board may reserve power to resume possession of such land for burial purposes on giving six months' notice (*u*), but after consecration, alienation of land would be impossible without de-consecration unless for some purpose for which a faculty could be obtained. In this connection it may be observed that unconsecrated land set apart for burial, and maintained by a burial authority for such a purpose, must not be used for any other purpose without the consent of the M. of H. (*a*).

A borough or U.D.C. may purchase a cemetery closed by Order in Council, which may be within the parish for which they act as a burial board, but the Order in Council closing the burial ground is not affected by such a purchase (*b*). [641]

(iii.) *Restriction on Use of Land for Burial by Burial Act, 1906.*—No ground not used or appropriated for a cemetery before August 14, 1855, may be used for burial under the Burial Acts, within one hundred yards from any dwelling-house, without the consent in writing of the owner, lessee and occupier of such house (*c*). This consent (*d*), however, is not required where the dwelling-house is or was begun to be erected, or is or was erected or completed, *after* any part of that burial ground has or had been so used or appropriated (*e*). This prohibition, however, is against actual interment. Unless any burial takes place there is nothing to prevent land being appropriated within the limit; and the distance is to be measured as the crow flies, and from the *walls* of the dwelling-house (*f*). In the light of the above observations, it will be appreciated that it is desirable to "appropriate" land required for a burial ground as early as possible. In practice, before taking any steps with regard to the acquisition of a burial ground, it is advisable to approach the Ministry. [642]

(iv.) *Rateability.*—A burial board is rateable with regard to its burial ground subject to the limitation that land acquired by a burial board, with or without any building erected or to be erected thereon, may not, while used for such purposes, be assessed at a higher value than that at which it was assessed when it was so acquired (*g*). [643]

(v.) *Consecration.*—A burial board, or local authority with the powers thereof may, if they think fit, apply to the bishop to consecrate any portion of a new burial ground approved for this purpose by the Secretary of State (*h*), and on an omission by the authority so to do within a reasonable time the Secretary of State, on the request of a reasonable number of persons, and if satisfied that the fees are either secured or have been paid, may make the application (*i*); furthermore

(*u*) Burial Act, 1855, s. 17; 2 Statutes 224.

(*a*) Burial Act, 1900, s. 6; *ibid.*, 251.

(*b*) Burial Act, 1857, s. 8; *ibid.*, 231.

(*c*) Burial Act, 1855, s. 9; *ibid.*, 221.

(*d*) Subject to an exception with regard to certain special rights acquired before November 27, 1906.

(*e*) Burial Act, 1906, s. 1; 2 Statutes 253.

(*f*) *Wright v. Wallasey L. B.* (1887), 18 Q. B. D. 783; 7 Digest 549, 273.

(*g*) See s. 15 of the Burial Act, 1855; 2 Statutes 223.

(*h*) Burial Act, 1900, s. 1 (1); 2 Statutes 248. For Form of Application, see Encyclopædia of Forms, 2nd ed., Vol. II., pp. 609, 611.

(*i*) Burial Act, 1900, s. 1 (2); 2 Statutes 248.

it is quite sufficient to indicate the boundaries of the consecrated and unconsecrated portions of a burial ground provided under the Burial Acts by boundary marks of stone or iron (*k*). Refusal by a bishop to consecrate may be followed by an appeal to the Archbishop (*l*), and the allotment of the unconsecrated part of the burial ground is subject to the sanction of the Home Secretary (*m*). Consecration of a portion of a cemetery by a Roman Catholic bishop is generally, if not always, accompanied by the stipulation that only Roman Catholics will be buried in the consecrated portion. As to erection of a chapel or chapels, and the use of the same; rights of sepulture; duties of incumbents; etc., see titles BURIAL AND CREMATION; CONSECRATION. [644]

(vi.) *Finance*.—The expenses of a burial board in providing and laying out a burial ground under the Burial Acts and building a chapel or chapels, are limited to the sum authorised by the borough or U.D.C. for that purpose (*n*), but such control is not imposed with regard to expenditure in other matters.

Generally, the expenses of a burial board are chargeable upon the general rate, which takes the place of the poor rate (*o*). In practice the board issues certificates, calling for contributions from the rating authority. Where the rating authority and the area of the board are co-terminous, the amount required is paid out of the general rate, otherwise the amount is raised as an additional item of the general rate levied upon that part of the rating area corresponding with the area of the board (*p*).

The expenses of providing and laying out a burial ground, etc., may, however, subject to the sanction of the borough or U.D.C., and the approval of the M. of H., be raised as a loan on the security of the rates from which these expenses are payable (*p*). A burial board may borrow by way of mortgage on the rates chargeable with their expenses; or by terminable annuities for a life or lives or for a term of years (*q*); or by debentures or annuity certificates (*r*); while, finally, the Public Works Commissioners can advance money to burial authorities under the authority of the Public Works Loans Acts. [645]

B. Borough Council acting as a Burial Board.—A borough council may be invested by Order in Council with powers for providing places of burial in cases where there is a difficulty or inconvenience in providing such under the Burial Act, 1853 (*s*). If the borough council then decide to provide a burial ground they *become* a burial board, and the Burial Acts apply to them with modifications, though the provisions of those

(*k*) Burial Act, 1857, s. 11; 2 Statutes 232.

(*l*) *Ibid.*, s. 12, as amended by s. 12 of the Burial Act, 1900; *ibid.*, 232.

(*m*) Burial Act, 1853, s. 7; 2 Statutes 213. For Form of Application, see Encyclopædia of Forms, 2nd ed., Vol. II., p. 609.

(*n*) Burial Act, 1852, ss. 19, 20; 2 Statutes 195. See *ante*, for the position where the council refuses to sanction the expenditure.

(*o*) As to the General Rate Fund of (1) a borough, (2) an U.D.C., see ss. 185—187 and 188—189 of the L.G.A., 1933.

(*p*) Burial Act, 1852, ss. 19, 20; 2 Statutes 195; R. & V.A., 1925, ss. 1—4, 62; 14 Statutes 617, and the Overseers Order (S.R. & O., 1927, No. 55); 14 Statutes 770.

(*q*) Burial Act, 1852, s. 20; Burial Act, 1857, s. 21; 2 Statutes 196, 234. Fifty years is the maximum period for the repayment of a loan; see s. 20 of the Burial Act, 1857; 2 Statutes 234.

(*r*) See ss. 4, 31, 34 of the Local Loans Act, 1875; 12 Statutes 242, 252, 253.

(*s*) Burial Act, 1854, s. 1; 2 Statutes 214. The Form of Petition will be found in the Encyclopædia of Forms, 2nd ed., Vol. II., p. 579.

Acts with regard to constitution, incorporation, meetings, entries of proceedings, etc., of a burial board, and particularly as to the sanction or approval of the vestry do not apply (*t*). The borough council may determine for what parish or parishes wholly or partly within the borough, the burial ground (or grounds) are deemed to be provided (*u*), and where an Order in Council provides that a parish within the borough is not to be assessed towards the execution of the Acts, the expenses of the council are met by an additional item of the general rate levied, under sect. 2 (5) of the R. & V.A., 1925, on the burial area (*a*). [646]

A borough council will also act as a burial board, where the council have by a resolution under sect. 62 of the L.G.A., 1894 (*b*), taken over the powers, property, debts and liabilities of a burial board for an area in the borough, or where the burial board by agreement with the council have made a similar transfer under sect. 44 of the Sanitary Act, 1866, as re-enacted in Sched. V. to the P.H.A., 1875 (*c*).

As a burial board, the borough council will in future exercise its functions in part under the Burial Acts and in part under the L.G.A., 1933 (*d*). It will be seen that several of the provisions of the Burial Acts, 1852 and 1854, are entered in the Eleventh Schedule to the Act of 1933 as repealed, except so far as they relate to burial boards appointed under the Burial Acts, 1852 to 1906, meaning burial boards elected as such. But the Burial Act, 1862, is wholly repealed, together with sects. 6 and 11 of the Burial Act, 1854. Thus in relation to burial business, the borough council will be governed by the provisions as to meetings and proceedings in sects, 75, 76, and Parts II. and V. of the Third Schedule to the Act of 1933, and the provisions as to committees and joint committees in Part III. of the Act (*d*). They may also acquire land by agreement, whether within or without the borough, under sect. 157 of the L.G.A., 1933 (*d*). With the consent of the M. of H., land may be acquired notwithstanding that it is not immediately required for the purpose of the council's functions as a burial board (*e*). The council may also, under sect. 163 of the Act (*d*), with the approval of the M. of H., appropriate surplus land belonging to them to the purposes of the Burial Acts, but if the land is to be used as a burial ground, the appropriation will only be allowed by the Minister after local inquiry and consideration of any objections made by persons affected by that use of the land. The same section would enable the council, with the Minister's approval, to appropriate surplus burial land, which had not been consecrated, to any other purpose for which the council were authorised to acquire land. Provisions as to the sale or exchange of surplus land will also be found in sect. 165 of the Act of 1933 (*d*), and in relation to a borough council, this section will supersede sect. 28 of the Burial Act, 1852 (*f*), which is repealed except as to burial boards elected as such. On the other hand as respects letting surplus burial land, it seems to be intended that the council should still proceed under sect. 17 of the Burial Act, 1855 (*g*), rather than under sect. 164 of the L.G.A., 1933 (*d*), because no repeal of sect. 17 is made by the Act of 1933. No doubt this course was due to the restrictions imposed on letting by sect. 17, viz. the consent of the Minister to the letting is necessary,

(*t*) Burial Act, 1854, s. 2; 2 Statutes 215.

(*u*) *Ibid.*, s. 7; *ibid.*, 217.

(*b*) 10 Statutes 816.

(*d*) 26 Statutes 295 *et seq.*

(*f*) 2 Statutes 199.

(*a*) *Ibid.*, s. 9; *ibid.*, 217.

(*c*) 13 Statutes 782.

(*e*) L.G.A., 1933, s. 159.

(*g*) *Ibid.*, 224.

and land which has been consecrated, or in which an interment has taken place, cannot be let under the section. [647]

Similarly, a borough council acting as a burial board will in future borrow under sect. 195 of the L.G.A., 1933 (*h*), with the consent of the Minister, instead of under sect. 20 of the Burial Act, 1852 (*i*), and the maximum period for the repayment of a loan will, under sect. 198 (1) of the Act of 1933, be 60 years instead of 50 years (*j*). The method of borrowing, the security for the loan, the mode of repayment and the formation of any sinking fund will all be governed by Part IX. of the L.G.A., 1933 (*h*). [648]

C. U.D.C. acting as a Burial Board.—Sect. 49 of the L.G.A., 1858 (*k*), which is re-enacted in Sched. V. to the P.H.A., 1875 (*l*), allowed the vestry when the appointment of a burial board for a parish in an urban district had been resolved upon, to decide that the U.D.C. should be the burial board, but if the parish was a ward for the election of councillors, the members of the council for the ward formed the burial board, where the vestry decided that no burial board should be elected.

An U.D.C. may also be constituted a burial board by an Order in Council under sect. 4 of the Burial Act, 1857 (*m*). This provision is much on the same lines as sect. 1 of the Burial Act, 1854 (*n*), referred to on p. 327, *ante*, allowing a borough council to be constituted a burial board by Order in Council.

An U.D.C. will also act as a burial board, where the council have by a resolution under sect. 62 of the L.G.A., 1894 (*o*), taken over the powers, property, debts and liabilities of a burial board for an area in the urban district, or where the burial board by agreement with the council have made a similar transfer under sect. 44 of the Sanitary Act, 1866, (*p*), as re-enacted in Sched. V. to the P.H.A., 1875 (*q*).

In all these instances, the U.D.C. will in future exercise its functions as a burial board in part under the Burial Acts and in part under the L.G.A., 1933, as has been described on p. 328, *ante*, with reference to a borough council acting as a burial board.

The expenses of an U.D.C. as a burial board will be defrayed out of the general rate of the urban district, or if the burial area comprises a part only of the urban district by an additional item of that rate levied, under sect. 2 (5) of the R. & V.A., 1925 (*r*), on the burial area. [649]

D. Parish Council acting as a Burial Board.—If the Burial Acts are in force in the whole or part of a rural parish with a parish council, the parish council are the burial authority by virtue of sect. 7 (5), (7) of the L.G.A., 1894 (*s*), and will in future derive their powers in part from the Burial Acts and in part from the L.G.A., 1933.

The powers of a parish council for the acquisition of land for the purposes of a burial ground are now contained in sects. 167 and 168 of the L.G.A., 1933 (*t*). Hence it may acquire such land, whether situate within or without the parish, by way of purchase, lease or exchange.

Should a parish council find itself unable to purchase by agreement

(*h*) 26 Statutes 412.

(*i*) 2 Statutes 196.

(*j*) See the proviso to s. 198 (1) and Eighth Schedule to the Act; 26 Statutes 414, 510, in which the Burial Acts are *not* entered.

(*k*) 21 & 22 Vict. c. 98.

(*l*) 13 Statutes 782.

(*m*) 2 Statutes 228.

(*n*) *Ibid.*, 214.

(*o*) 10 Statutes 816.

(*p*) 29 & 30 Vict. c. 90.

(*q*) 13 Statutes 782.

(*r*) 14 Statutes 620.

(*s*) 10 Statutes 779.

(*t*) 26 Statutes 398.

and on reasonable terms suitable land required, it may represent the case under sect. 168 (*u*) to the county council of the county in which the parish is situated. Should that body be satisfied that suitable land for the said purpose cannot be purchased on reasonable terms by agreement and that the circumstances are such as to justify the county council in proceeding under the section, the county council must cause a local inquiry to be held in the parish by one or more members, or such officer of the council as the council may appoint for the purpose. Notice of such inquiry is then to be published in the parish and a notice of the land proposed to be taken served upon the owners, lessees, and occupiers of the said land (tenants for a month or less period excepted).

On completion of the inquiry, and after hearing objections, the county council may make and submit to the Minister of Health an order for the compulsory purchase of all or part of the land proposed to be taken. If no objections are made, or those made are withdrawn, the Minister must (if satisfied that the proper notices have been published and served) confirm the order with or without modification.

The order is to be carried into effect by the county council, but the land, when acquired, is conveyed to the parish council (sect. 168 (3) (*b*)). The county council in making, and the Minister in confirming, the order is to have regard to the extent of the land held in the neighbourhood by any owner, and to the convenience of other property belonging to the same owner; he is also, as far as is practicable, to avoid taking an "undue or inconvenient" quantity of land from any one owner (sect. 168 (4)). Unless the Minister of Health so directs, the person holding the inquiry is not allowed to hear counsel or expert witnesses.

Should the county council refuse to make an order as above, the parish council may petition the Minister who, after holding a local inquiry, may, if he thinks proper, make the order, which will take effect as though it had been made by the county council and confirmed by the Minister.

Power is given to the parish council by sect. 170 of the Act of 1933 (*v*) with the consent of the parish meeting, and of the Minister, to sell or exchange land not required for the purposes for which it was acquired, but in letting surplus burial land the parish council should proceed under sect. 17 of the Burial Act, 1855 (*w*), rather than under sect. 170 of the Act of 1933, as section 17 is not repealed as to parish councils by the Act of 1933 (see *ante*, p. 328).

In future, a parish council will borrow for burial purposes, subject to the consent of the M. of H. and of the county council, under sect. 195 of the L.G.A., 1933 (*x*), and the maximum period for the repayment of a loan will, under sect. 198 (1) (*y*) of the Act, be 60 years. The method of borrowing, the security for the loan, the mode of repayment and any sinking fund will all be governed by Part IX. of the L.G.A., 1933 (*a*), but under the proviso to sect. 196 (1) (*b*) of the Act a parish council can only borrow by way of mortgage. The consent of the parish meeting and the approval of the county council are necessary, under sect. 193 (4) of the Act (*c*), before the parish council incur any expense or liability which will involve a loan.

To meet the expenditure of a parish council precepts are issued to the council of the rural district in which the parish is situate, and will

(*u*) 26 Statutes 398.

(*x*) 26 Statutes 399.

(*b*) *Ibid.*, 413.

(*v*) *Ibid.*, 400.

(*y*) *Ibid.*, 414.

(*c*) *Ibid.*, 411.

(*w*) 2 Statutes 224.

(*a*) *Ibid.*, 412.

be met by the levy of an additional item of the general rate, under sect. 2 (5) of the R. & V.A., 1925 (*d*), on the burial area. [650]

E. Joint Burial Committee for Area Extending into (a) more than one Rural Parish, or (b) an Urban and a Rural Parish. These joint burial committees are numerous and were created by sect. 53 (2) of the L.G.A., 1894 (*e*). That sub-section provided that where the area under any of the adoptive Acts would not be comprised within one rural parish, the powers and duties of the authority should be transferred to the parish councils of the rural parishes, wholly or partly comprised in that area, or if the area was partly comprised in an urban district (*f*) to those parish councils and the district council of the urban district, to be exercised by a joint committee appointed by those councils. Where there is no parish council for a rural parish, the parish meeting is substituted.

These joint committees are not corporate bodies and any land acquired by the joint committee must therefore be conveyed to the constituent councils. [651]

The provisions of the Act of 1894 were later supplemented, but only as respects joint burial committees appointed under sect. 53 of the Act of 1894, by the L.G. (Joint Committees) Act, 1897 (*g*). The Act provides that any expenses of the joint committee shall be defrayed, any money required shall be borrowed and any receipts arising shall be divided, by the councils appointing the joint committee, in such proportion as they may agree upon or as, in default of agreement, may be determined by the county council, or if one of the appointing councils is a county borough council by the M. of H. [652]

Any money borrowed for the use of the joint committee must be borrowed by the constituent councils, because the joint committees are not corporate bodies; and the Act of 1897 provides that the consent of the Minister shall be required to the borrowing, and no other consent shall be required. In this instance, therefore, no consent of the county council or a parish meeting is necessary to enable a parish council to borrow for burial purposes. The usual practice is that application for the Minister's consent to a loan should be made by the clerk of the joint burial committee, accompanied by all necessary particulars and by evidence that each of the constituent councils agree to a named proportion of the loan being raised by them. It would appear that the loan should be sanctioned and the money borrowed under sect. 195 of the L.G.A., 1933 (*h*), especially as parish councils by sect. 12 (3) of the L.G.A., 1894 (*i*), were prohibited from borrowing for the purposes of any of the adoptive Acts, otherwise than in accordance with the L.G.A., 1894, and that the Act of 1897 should not be regarded as containing the borrowing power but merely as dispensing with the necessity of the consent of the county council and of a parish meeting under sect. 195 of the Act of 1933 to the loan (*h*). [653]

The number of members of a joint burial committee should be settled by agreement between the constituent councils, but any difference as to the constitution of a committee may, under the L.G. (Joint Committees) Act, 1897 (*j*), be determined by the M. of H. Sect.

(*d*) 14 Statutes 620.

(*e*) 10 Statutes 810.

(*f*) In this Act, "urban district" includes a borough, and "district council" includes a borough council; see s. 21 of the Act.

(*g*) 2 Statutes 280.

(*h*) 26 Statutes 412.

(*i*) 10 Statutes 785. Repealed by the L.G.A., 1933.

(*j*) 2 Statutes 280.

1 (1) (c) of that Act applied to the proceedings of a joint burial committee, but para. (c) is repealed by the L.G.A., 1933, and their proceedings will in future be governed by sect. 96 of that Act (*k*), which allows standing orders to be made by local authorities who appoint a joint committee under any enactment, and gives the person who presides at a meeting of the joint committee a second or casting vote. [654]

It will be observed that sect. 53 (2) of the L.G.A., 1894 (*kk*), did not apply, where no part of the burial area was within a rural parish, when the L.G.A., 1894, came into operation. No part of this sub-section is repealed by the L.G.A., 1933, and sub-section (4) of sect. 91 of that Act (*l*) excludes the joint burial committees, to which reference has been made, from the scope of that section. Therefore, they will still continue to be appointed under sect. 53 (2) of the L.G.A., 1894. [655]

Note on the Selection of a Site for a New Burial Ground or Cemetery.—Any one called upon to assist in the choice of a cemetery or burial ground site should consider the H.O. suggestions on this subject, dated November, 1872 (*ll*). “The site for a burial ground should be chosen far enough from dwellings to secure their inmates from danger or annoyance” (see the restriction imposed by the Burial Act, 1906, *ante*, p. 326) “and near enough to the mass of the population to avoid as much as possible the cost and inconvenience of conveying funerals a too great distance.” “Land at building-ground price is generally too dear for graves . . . (but) . . . it is often more economical to pay a rather higher price for land” conveniently situated. Such matters as soil and drainage should be taken into consideration, the ideal soil being a dry, open one which facilitates decay, etc. Some soils again are expensive to dig and to drain. “The neighbourhood of any open reservoir or conduit conveying water used for domestic purposes should be avoided, and great care taken that no wells or streams supplying such water are liable to be polluted by drainage from graves.”

It is obvious that the more the money laid out the higher will be the charges for burial, or the greater the charge on the rates; but while a burial authority would perhaps not look for a substantial profit from its burial ground or cemeteries, ratepayers have a right to require that they should, as far as practicable, be self-maintaining. The memorandum of the Local Government Board on the sanitary requirements of cemeteries (*m*) should also be consulted. [656]

3. THE MANAGEMENT OF BURIAL GROUNDS

A. The Parish Churchyard.—The incumbent of the parish church is not the owner of the churchyard in the full sense of the term, though he is the person in whom the freehold is vested. Hence in a proper case a civil court would grant an injunction to restrain any unauthorised interference with the churchyard, even by a rector or incumbent, at the instance of the churchwardens (*n*), and even if the incumbent is the freeholder and opposes it, a faculty may still be granted to make alterations in the churchyard.

Custom may differ in particular churchyards. Hence though in some it may still be the duty of the incumbent to maintain the church-

(*k*) 26 Statutes 357.

(*kk*) 10 Statutes 810.

(*l*) 26 Statutes 355.

(*ll*) Set out in Brooke Little's Law of Burials, pp. 698 *et seq.*

(*m*) *Ibid.*, p. 719.

(*n*) *Marriott v. Tarpley* (1838), 9 Sim. 279; 19 Digest 292, 855; but see also *Batten v. Gedge* (1889), 41 Ch. D. 507; 19 Digest 263, 465.

yard and its fences in a proper state (*o*), generally this duty, including that of the churchwardens in certain other matters, has been transferred to the parochial church council (*p*). Wide powers are also possessed by the Ecclesiastical Commissioners to make alterations and improvements, etc., to the walls and boundary fences of existing churchyards provided under the Church Building Acts (*q*).

While every parishioner and inhabitant of a parish and every person dying within the parish has the right to be interred in the parish churchyard or graveyard (though not in the church), it does not appear to be generally known that an exclusive right to the use of a particular part of the churchyard for the purposes of burial can only be acquired by the issue of a faculty from the Consistory Court of the diocese in which the churchyard is situated; but neither in the case of the churchyard nor the cemetery does the faculty or deed convey the freehold of the particular plot of land. Non-parishioners, or strangers to the parish, do not possess the above right (which is one enforceable at common law as well as in the Ecclesiastical Court), though, in practice, they are frequently interred in the parish churchyard with, generally, the consent of incumbent and churchwardens. There appears to be no authority for dispensing with the approval of the latter. Should, however, inconvenience to the parishioners be caused by the burial (without a faculty) of a stranger in the parish churchyard, the burial would be an offence against ecclesiastical law and possibly could be restrained by injunction (*r*).

The faculty for the grant of an exclusive right of burial in a particular part of the churchyard, or for the construction of a vault, may be limited. It may be granted "to the family of such a person as long as they remain inhabitants and parishioners," or "to so-and-so, his heirs and family." On the other hand the grant of an exclusive right of burial in a cemetery (*s*) is usually in perpetuity, subject to the regulations in force at the cemetery for the time being, and also to the fees and payments relating to burials and other matters which may affect the plot of ground concerned.

The choice of the particular part of the churchyard in which a body shall be buried is a matter for the discretion of the incumbent and churchwardens and "there cannot be a good custom entitling the inhabitants of a particular parish to be buried as near as possible to their ancestors" (*t*). The mere common law right of burial in a churchyard is a right of burial in the usual manner. It includes no right to the erection of a monument, nor the construction of a vault. The "manner" of burial is a matter peculiarly within the control of the Ecclesiastical Court.

A faculty is necessary for the erection of a monument, but in practice the permission of the incumbent is alone usually sought. Such a faculty may be withheld by reason of the nature of the proposed inscription to be placed on the memorial. While it is the duty of the incumbent (and one which is sometimes rather arbitrarily interpreted) to super-

(*o*) A duty that may be enforced by indictment or if the liability is not denied, by proceedings in an Ecclesiastical Court (*Claydon v. Duncombe Churchwardens* (1638), 2 Roll. Abr. 287, pl. 52; 7 Digest 526, 68.

(*p*) By the Parochial Church Councils (Powers) Measure, 1921, s. 4 (i.), (ii.), (c); 6 Statutes 74.

(*q*) 6 Statutes, title "Ecclesiastical Law."

(*r*) 3 Halsbury (Hailsham ed.), 467.

(*s*) See Deed of Grant, *post*, p. 350.

(*t*) 3 Halsbury (Hailsham ed.), 468.

intend the placing of inscriptions on monuments, a faculty would nevertheless be granted without the incumbent's consent if unreasonably withheld. The property in a monument remains in the person who set it up during his life, thereafter it devolves upon the heir of the deceased whom it honours (*u*).

Existing statutory restrictions against burial in or near churches, enforceable by penalties recoverable summarily, being somewhat outside the scope of this article, need not be mentioned here.

To some extent the care of the churchyard is in the hands of the sexton, an office which, in ancient parishes, is a freehold for life.

Penalties for "brawling" in a churchyard are provided for in the Ecclesiastical Courts Jurisdiction Act, 1860 (*a*), while "brawling" by a clergyman is penalised by an old statute of Edward VI. (*b*). For a detailed account of matters mainly within the scope of ecclesiastical law, and outside the jurisdiction of local authorities, reference must be made elsewhere, *e.g.* 3 Halsbury (Hailsham ed.), title "Burial," and 11 Halsbury (Hailsham ed.), title "Ecclesiastical Law." [657]

Registration of Burials in a Churchyard.—In the parish churchyard, the duty of keeping the register of burials falls upon the rector, vicar, curate or officiating minister of the parish, and the registration must be made in books prescribed for the purpose (*c*). It is the duty of the person specified above, as soon as possible after the burial (and in no case later than seven days) to record and enter "in a fair and legible handwriting" the prescribed particulars, *viz.*: "name," "abode," "when buried," "age," "by whom the ceremony was performed," and to sign the entry. The register books are to be deemed to belong to the parish or chapelry and are to remain in the power and custody of the rector, etc. (*d*). They are to be kept in a chest or safe of a character to be prescribed by the bishop of the diocese, which is to be painted and repaired in accordance with his directions (*e*), and, except when in use, are to be kept under constant lock and key. Those not in actual use may be deposited in the diocesan record office.

Searches are to be permitted at reasonable times both in the church or diocesan registry, and certified copies under the hand of the rector, vicar or curate who has the keeping of the registers may be obtained at fees ranging from one shilling (stamp duty one penny, payable by adhesive stamp duly cancelled) (*f*). As to the correction of errors, and the procedure for the rectification of the same, reference should be made to sect. 21 of the Forgery Act, 1830 (*g*).

It might be noted here that where a burial has taken place in the consecrated ground of a churchyard or graveyard without the rites of the Church of England under the Burial Laws Amendment Act, 1880 (*h*), the person responsible for the burial must, on the same or next day, forward a certificate of such burial in the proper form to the rector, vicar, incumbent, or other officiating minister in charge of the parish . . . or district or, in the case of any burial ground or cemetery vested

(*u*) 3 Halsbury (Hailsham ed.), 471.

(*a*) 6 Statutes 196.

(*b*) Stat. 5 & 6 Edw. 6, c. 4, s. 2; 6 Statutes 1187.

(*c*) Parochial Registers Act, 1812, s. 1; 15 Statutes 692.

(*d*) *Ibid.*, s. 5.

(*e*) Parochial Registers and Records Measure, 1929, s. 10; 6 Statutes 1247.

(*f*) See Stamp Act, 1891, ss. 1, 64 and Schedule I.; 16 Statutes 618, 637, 656

(*g*) 15 Statutes 699.

(*h*) S. 10; 2 Statutes 245.

in a burial authority, to the person required by law to keep the register of burials (*i*), who must thereupon enter such burial in the register of burials of such parish or district, or of such burial ground or cemetery, and such entry shall form part thereof. The entry, instead of stating by whom the ceremony of burial was performed, shall state by whom the same has been certified under this Act. It is a misdemeanor to neglect this duty.

It is a felony, punishable by a maximum sentence of penal servitude for life, to destroy a register or knowingly make a false entry therein (*k*) ; while forgery of a register or a copy, or of a seal of a burial board or burial authority with intent to defraud or deceive, is likewise a felony punishable by fourteen years' penal servitude (*l*). [658]

B. Burial Grounds under the Burial Acts.—Burial boards are empowered to lay out and embellish any burial ground within their jurisdiction, a duty which applies to local authorities which are either burial boards or exercise the powers of the same (*m*), and generally the management, regulation and control of burial grounds subject to the provisions of the Burial Acts and the supervision of the M. of H., is vested in and exercisable by the burial board or burial authority. The M. of H. (formerly the Secretary of State) is empowered to make regulations for the protection of public health and the maintenance of public decency (*n*). The Minister may also from time to time direct inspection of a burial ground to ascertain whether such regulations have been carried out (*o*), and a penalty not exceeding £10, on summary conviction, is provided for the obstruction of the inspector.

The regulations still in force in many burial grounds (as distinct from cemeteries) seem to be those applied by the Home Secretary, or since 1900 by the L.G.B. or M. of H., when sanction was given to the provision of the ground. A code of regulations under sect. 44 of the Burial Act, 1852, seems to have been drawn up by the H.O. many years ago (*p*), but it is not clear that this code extends to all burial grounds. It is believed that it was the practice of the H.O. to give a direction by letter that the code should apply (in some instances with modifications) to a particular burial ground. The M. of H. (successors to the L.G.B.) to whom the Secretary of State's powers were transferred in this behalf in 1900 (*q*) have not apparently made fresh regulations under sect. 44 of the Act of 1852. Any person having the care of a burial ground to which the regulations apply, who violates or neglects a regulation is liable on summary conviction to a fine of £10 (*r*). Some burial regulations forbid any earthen grave to be dug within one foot of any other grave, others vary the distance, while regulations regarding burials in common graves differ. A usual regulation seems to be that "one body only shall be buried in any earthen grave on the same day, unless the bodies be those of members of the same family ; and that

(*i*) See *post*, p. 338, "Register of Burials."

(*k*) Forgery Act, 1861, s. 36, as amended by Forgery Act, 1913, s. 20 ; 4 Statutes 585.

(*l*) *Ibid.*, s. 5 (2) ; 4 Statutes 792. Cf. provisions of s. 15 of the Burial Act, 1857 ; 2 Statutes 233, *re* registers of a burial authority.

(*m*) Burial Act, 1852, s. 30 ; 2 Statutes 200.

(*n*) *Ibid.*, s. 44.

(*o*) Burial Act, 1855, s. 8 ; 2 Statutes 220.

(*p*) This is given on pp. 713, 714, of Brooke Little's Law of Burials, 3rd ed.

(*q*) Burial Act, 1900, s. 4 ; 2 Statutes 251.

(*r*) Burial Act, 1855, s. 8 ; 2 Statutes 220.

every coffin be forthwith covered with earth at least a foot thick, which shall be closely rammed down, never to be disturbed."

It should also be noted that the H.O. have from time to time issued "Circulars" and "Directions" and "Suggestions" with regard to burial grounds.

As to the acquisition under the Open Spaces Act, 1906, of a burial ground by a local authority, see the title *OPEN SPACES*. [659]

C. Government Control and Supervision of Burial Grounds.—As to the closing of a burial ground because it is overcrowded, see the title *DISUSED BURIAL GROUNDS*.

The Minister of Health may obtain an Order in Council requiring churchwardens or other persons having the care of vaults or places for burial to do certain acts to prevent these places becoming a danger to health. The expenses of so doing are recoverable out of the general rate, and the order must be published in the *London Gazette* (s). Should there be default by persons not being churchwardens in complying with the Order the Minister may authorise the churchwardens. In such a case the latter have powers of entry, etc., for the required purpose, and it is a misdemeanor to obstruct them or persons acting under their instructions (t).

The Minister of Health may also apply for an Order in Council making regulations, as regards public health and decency, in the case of burials in common graves in the metropolitan cemeteries mentioned in Schedule B. to the Burial Act, 1852 (u), or in any cemetery provided under a local Act. Any order must be published in the *London Gazette*, and the penalty for violation or wilful neglect to observe the regulations is £10 (a).

Finally, the Secretary of State may appoint a person to hold an inquiry as to consecration of a burial ground, the building of a chapel, fees to ministers and sextons, and may assign the remuneration and pay the expenses of the inquiry out of moneys provided by Parliament. He may also, however, order the burial authority (or other parties concerned) to pay the whole or part of the expenses of the inquiry (b). [660]

D. The Practical Administration of a Burial Ground.—In the following paragraphs, which are of a practical nature, the term cemetery will be used to include both "burial grounds" and "cemeteries," this section of the article being one that deals with points common to both.

The burial authority will appoint its clerk (who may also act as registrar of burials) (c), and a superintendent of the cemetery. It is advisable that the statutory records, books and plans should be under the control of the clerk, who is generally the clerk to the local authority and has a clerical staff to assist him, though duplicate documents may conveniently be kept at the cemetery superintendent's office. With regard to the statutory grave plan (d), which should be prepared by a qualified surveyor, it is almost essential that the superintendent should have a copy. This plan should plot out in advance,

(s) Burial Act, 1857, s. 23; 2 Statutes 235.

(t) Burial Act, 1859, s. 1; *ibid.*, 238.

(u) *Ibid.*, 210.

(a) Burial Act, 1857, s. 10; *ibid.*, 232.

(b) Burial Act, 1900, s. 5; *ibid.*, 251.

(c) See the Registration of Burials Act, 1864, s. 1; *ibid.*, 276. Sometimes the cemetery superintendent is the registrar of burials.

(d) *Infra*.

grave spaces and paths. It should have a numbering system at once reliable and accurate. Further practical considerations suggest that the cemetery clerk (the official who deals with burial affairs) should not take fees in person, but these should be paid direct to the accountant's department and a receipt given. When this is shown to the cemetery clerk he is in a position to book the grave.

Fees, regulations and registration of burials will be dealt with elsewhere (e).

The Statutory Records.—A cemetery authority is under statutory obligation to keep the following three records, viz. :

1. A grave plan.
2. A register of graves.
3. A register of burials. [661]

(i.) *Grave Plan.*—"The area to be used for graves shall be divided in grave spaces, to be designated by convenient marks, so that the position of each may be readily determined, and a corresponding *plan* kept on which each grave space shall be shown" (f). In the case of the cemetery, a similar plan is required by sect. 41 of the Cemeteries Clauses Act, 1847 (g).

In practice, it will be found convenient to make two copies of the plan (under the surveyor's direction), sixteen feet to the inch being a suitable scale. Graves available for purchase should have a distinctive colour according to class (there are usually three classes, as well as "common graves"), and the numbering should be marked consecutively in advance by the surveyor who draws up the plan. In a large cemetery the ground is sometimes divided into sections, e.g. A, for consecrated ground; B, for Nonconformist, and so on. As to the purchase and transfer of rights of burial, see *post*, p. 349. [662]

(ii.) *Register of Graves.*—No. IV. of the statutory regulations usually in force (h), provides for a *register of graves*, its requirements being the name and age of each person buried, and the date of the interment. The corresponding record required by sect. 41 of the 1847 Act (i) is a register of grants of exclusive rights of burial, containing the name and address of each grantee. The headings of the register (which is the burial authorities' "ledger") will therefore contain all the information required by statute (and any further information the cemetery authority may find convenient) in the case of *private* graves. There is no apparent necessity to keep in all cases a register of *common* graves, for burials in the latter being usually made consecutively until the grave is full, the *burial register* (q.v.) will be sufficient for reference. It will be found convenient in the register of *private* graves to give particulars of the grave, number of interments allowable, name and address of purchaser or transferee, the number in the burial register, and the particulars of interments. Some burial authorities (k) have an excellent system of leaving a space in the register for a signed receipt of the deed by the purchaser of the grave. It cannot be too strongly insisted that any scheme ensuring accuracy in a matter of this kind is commendable.

(e) For Fees, see *post*, p. 340; Regulations, *post*, p. 339; and Registration, *post*, pp. 342 *et seq.*

(f) Regulation II. of the H.O. series, see *ante*, p. 335.

(g) 2 Statutes 264.

(h) See the H.O. Circular of November, 1872, last paragraph; further as to this, Brooke Little, 3rd ed., p. 706.

(i) 2 Statutes 264.

(k) E.g. the Battersea Borough Council.

Some burial authorities add to their register of graves additional information likely to prove useful to them, *e.g.* "Has the grave a monument?" or, "Is this a case in which fees are paid for planting?" As a considerable income may accrue to a burial authority from the care of graves, this last entry may prove useful.

As to common graves, owing to the prohibition in para. vi., of the H.O. regulations (*l*) of the interment in a grave of more than one body at one time, unless where members of the same family are interred, it is customary for burial authorities who usually have to arrange for more than one common interment on the same day, to keep in use as many common graves as will allow of the largest number of common interments likely to take place in any one day. Sometimes twelve to fifteen bodies are buried in a common grave, which is frequently dug to a depth of fifteen to twenty feet, a foot of soil at least being left between each coffin, such number being dependent upon the number of children under the age of twelve years. There seems to be no maximum depth prescribed under any statutory regulations in force governing common graves, in practice the matter being one that is affected by the conditions prevailing in the particular burial ground or cemetery, *e.g.* nature of soil, drainage, etc. Once filled, common graves are not to be reopened. [663]

(iii.) *Register of Burials*.—All burials in any burial ground under the Burial Acts, or in a cemetery (or in any other burial place, *e.g.* a vault, not subject to special statutory provisions as to registration of burials) must be registered in register books (*m*). Such a register usually contains the following entries :

1. Register number.
2. Name, age and address of person buried.
3. Home address, and place where death occurred.
4. Nature of certificate ("death certificate" or "coroner's order," etc.).
5. Date of burial.
6. By whom ceremony performed.
7. By whom certificate given under Burial Laws Amendment Act, 1880 (*n*).
8. In what ground buried (Church of England, Roman Catholic, or unconsecrated).
9. Whether parishioner or non-parishioner.
10. Section of ground and number of grave.
11. If new private grave, state class.
12. Depth of private grave prior to interment.
13. Remarks.

It will be noted that not all these items are statutory requirements, but the additional headings may be useful for purposes of record and reference. In such a register, the insertion in the "Remarks" column of the word "stillborn" will sufficiently explain the entry in such a case.

In order to ensure accuracy, the register of burials and of private graves should be checked, say monthly, by comparing the entries therein

(*l*) See Brooke Little, pp. 713, 714.

(*m*) Burial Act, 1853, s. 8; 2 Statutes 213; Cemeteries Clauses Act, 1847, s. 32; *ibid.*, 262; Registration of Burials Act, 1864, ss. 1, 7; *ibid.*, 276.

(*n*) A provision rendered necessary by the Burial Laws Amendment Act, 1880, s. 10 and Sched. B.; 2 Statutes 245, 247; extended to cemeteries under the P.H. (Interments) Act, 1879, by s. 9 of the Burial Act, 1900; 2 Statutes 252.

with the "death certificates" and "coroner's orders." The grave plan can be checked by ticking off the grave spaces sold from the register of private graves. Lastly, "common graves" can be checked, when full, from the burial register. [664]

Other Useful Forms.—It is also suggested that, beyond the requirements specified above, a burial authority might, with advantage, keep in use other books and forms, *e.g.* :

(a) *Notice of Interment, i.e.* the form that is filled up at the office of the burial authority when any one purchases a grave or arranges for an interment. These forms are usually distributed to undertakers. [665]

(b) *A Fee Book.*—This should contain a copy of the particulars of fees which the cemetery clerk hands to the undertaker to be paid in the accountant's office. When the receipt for the fees is shown to the cemetery clerk he is in a position to book the order for the grave. [666]

(c) *Deed of Conveyance of a Grave Space.*—[See "Purchase and Transfer of Rights of Burial," p. 349, *post.*] [667]

(d) *Notice as to Planting of Graves.*—A reasonable time after the purchase of a grave, it is suggested that the clerk should call the owner's attention to the willingness of the authority to plant and keep the grave in order on payment of a fee. It could be conveniently done when the deed of conveyance is issued. All planting charges, as a matter of convenience, should be made to fall due on one annual date, if at all possible, and an annual reminder should be sent if unpaid. As many burial authorities receive a considerable income from this source the matter is one worth attention. [668]

(e) Various notices, as *e.g.* that sent to an undertaker or other person responsible for a burial, where an interment takes place without the statutory certificate or order or the statutory declaration (*o*) has not been filled up, pointing out the consequences of the omission. [669]

Burial Ground Regulations.—It would be superfluous to set out at length the comprehensive rules and regulations which, with certain variations, apply to all burial grounds and cemeteries, and which are displayed in a prominent position. These regulations in each case have been approved and adopted by the controlling authority who reserve the right, from time to time, to make any alterations that they deem necessary.

Briefly, they deal with every matter concerning management, *e.g.* times and hours of opening, instructions with regard to notices of interments, and the payment of fees. Generally a cemetery is open for interments every weekday from 10 a.m. to 12 noon, and 1 p.m. to 4.30 p.m. (Saturdays 9.30 a.m. to 12 noon), with the exception of Christmas Day, Good Friday, Bank Holidays and days appointed for any general fast or thanksgiving. An additional fee is usually prescribed in the scale for funerals beginning between 12 noon and 1 p.m., or which extend beyond noon or beyond the closing hours mentioned.

Notices should also be drawn up referring to statutory requirements, *e.g.* the necessity for the certificate with regard to a stillborn child, as well as other children, which must be delivered when the body is left for interment; and the delivery of the registrar's certificate or

(o) For this, see S.R. & O., 1927, No. 485, Fifth Schedule; 15 Statutes 814.

coroner's order at the time of interment to the person who buries, or performs the burial service.

Other regulations govern the size and depth of private graves, state the necessity for the production of the deed of conveyance before the opening or re-opening of a reserved grave space, prescribe in some detail the type and material permissible for the construction of gravestones, monuments and curbing, and state the rights of the burial authority with regard to the removal or replacement of these. A clause is usually included disclaiming responsibility for accidents to monuments or gravestones in the absence of negligence on the part of the authority's servants. Further regulations sometimes prohibit "touting" within the precincts for the erection or repair of monuments, etc., or for other work connected with any grave; and deal with the preservation of order, tidiness, and the protection of the authority's property. [670]

The Burial Service.—It frequently happens that the persons concerned with an interment prefer to leave arrangements for the attendance of a minister of religion in the hands of the cemetery authority. It is therefore advisable that the latter should be in a position to comply with any request of this kind. It is consequently the practice for the authority to arrange through the Free Church Council for the services of a Nonconformist minister, who will officiate at all Nonconformist burials. A similar arrangement is come to with the rural dean (or other dignitary) for the services of a clergyman to perform the Church service (or such portion of it as is desired) at Church of England funerals. Usually the gentleman chosen is in residence near the cemetery, and the fees may be paid over to the rural dean by the authority for distribution by him. The attendance of a Roman Catholic priest is also provided for by arrangement with the Roman Catholic bishop. The regulations of the authority usually contain a clause indicating the arrangements, and giving the usual times (usually half-hourly) for services. An additional fee, prescribed in the scale, may be charged for a service held at times other than at the usual time. By sect. 1 of the Parochial Registers Act, 1812 (*p*), officiating ministers have to keep registers of burials at which they officiate. The form of such a register (in which the entries must be numbered consecutively) is given by Sched. (C) to the Act. This register is conveniently kept at the superintendent's office. [671]

Fees.—There are two chief tables of fees to be considered in connection with a burial ground: (i.) those payable for interments, private graves, the right to erect monuments (*q*), which need the approval of the M. of H., and when approved are required by statute to be displayed conspicuously in some part of the cemetery; and (ii.) those payable for services rendered by ministers of religion or sextons which require H.O. approval (*r*). A further class of fees includes such items as the fee for planting; the fee for exhumation (apart from the H.O. fee); a fee for registering the transfer of ownership of a grave. These fees, being a domestic matter, do not require the consents necessary for the two statutory tables mentioned above. Copies of both these tables are in practice supplied gratis to undertakers, though it appears to be the policy of burial authorities to encourage, as much as possible, personal dealings

(*p*) 15 Statutes 692.

(*q*) Burial Act, 1852, ss. 33, 34; Burial Act, 1855, s. 7; Burial Act, 1900, s. 4; 2 Statutes 202, 220, 251.

(*r*) Burial Act, 1900, s. 3; 2 Statutes 249.

between themselves and their clients. The second mentioned table of fees, on the default of the local authority, can be settled by the Secretary of State; but in either case the fees must be collected by the authority and paid over to the ministers who have rendered the services (the actual division being a matter that concerns those persons or bodies with whom arrangements were made for their attendance) (*s*). A statutory fee not exceeding £2 has also been fixed as payable where the H.O. issues a licence (*t*) for the removal of a body, or remains of a body, which has been interred in any place of burial (*u*). [672]

Though the object of the establishment of municipal, etc., cemeteries, as has been observed elsewhere, is not primarily to make profit, they should be run, if possible, without incurring loss, hence business principles should apply to their management. The following practical points regarding fees are suggested in this connection:

(i.) While fees should be sufficiently high to meet expenditure, they should bear favourable comparison with those of neighbouring cemeteries. [673]

(ii.) While it is customary to charge higher fees for non-inhabitants than inhabitants it would, from a practical point of view, be a short-sighted policy, merely with the object of attracting interments, to charge low non-parishioner rates. A cemetery may thus be quickly filled and the consequent necessity of providing an extension on new ground or area will arise. With regard to the latter possibility, local authorities should keep an eye on the rate at which the cemetery is being filled, and the chance of purchasing new land at a favourable time and price, and fix non-parishioner charges accordingly. A local authority could, apparently, exclude non-parishioners from its burial ground; but see the exception in the case of "poor person," *post*, pp. 347, 348. [674]

(iii.) It is advisable that the fee for an inclusive right of burial should cover the issue of the deed (*a*). [675]

(iv.) Clergy fees must be the same in amount for both the consecrated and unconsecrated parts of the cemetery. The Home Secretary, however, is willing, where charges for grave spaces vary according to position, to approve varying fees therefor (*b*); hence a smaller fee can be prescribed for the poorer classes. The clergy fee being now collected by the burial authority, it is desirable also that the interment fee should include the clergy fee. The cemetery authority and not the relatives are liable to pay the clergy fee. [676]

(v.) The scale of fees should be as simple and intelligible as possible, and persons desiring to purchase graves or arrange for interments should be encouraged to deal direct with the cemetery authority. Though private graves should be classified (according to position, etc.), it is desirable that there should be at least one class of private grave provided at a fee within the reach of the humblest parishioner who is thereby encouraged to have a private grave rather than a right to a "common" interment. [677]

(s) See "Burial Service," *ante*, p. 340.

(t) Under s. 25 of the Burial Act, 1857; 2 Statutes 286.

(u) Fees (Increase) Act, 1923, s. 7; 2 Statutes 254.

(a) See "Purchase and Transfer of Rights of Burial," *post*, p. 349.

(b) H.O. Directions, dated Jan. 1, 1901 (printed in Brooke Little's Law of Burials, p. 697).

(vi.) The scale of fees should cover the removal and replacement of ordinary gravestones only, the fee in the case of monuments being fixed according to size, weight, etc. The authorities sometimes decline to deal themselves with heavy monuments. In any case they should be careful to place any liability for accident upon the person concerned. [678]

4. THE PRACTICE AND PROCEDURE OF BURIAL, INCLUDING REGISTRATION

A. Burial without Reference to Coroner.—In the title BURIAL AND CREMATION it has been pointed out that the death of any person casts a duty upon some other person (or group of persons) with regard to the disposal of the remains.

In the present section it is assumed that the death is “regular” (see *post*), and has occurred in a private house. It is forthwith the duty of the nearest relatives of the deceased present at the death (*c*); or failing such a person of every relative dwelling or being in the same sub-district; or failing them of each person present at the death and of the occupier of the house; or failing them of each inmate of the house, and of the person causing the body to be buried to give, to the best of (their) knowledge and belief, information of the particulars required by law regarding the death, within five days of the death, to the registrar of the sub-district in which the death took place. It is forbidden (*d*) to dispose of the body of a deceased person except on a registrar’s certificate or a coroner’s order. One of the statutory requirements needed by the registrar is a “medical certificate of the cause of death.” [679]

(a) *The Medical Certificate.*—The form of certificate now required is that contained in the Third Schedule of the Registration (Births, Stillbirths, Deaths and Marriages) Consolidated Regulations, 1927 (*e*), and is given by the medical practitioner who was in attendance at the illness. It contains, besides the details necessary for complete identification, what in the doctor’s opinion is the immediate cause of death, and mentions as well any morbid conditions noticed by the practitioner signing. Should he, however, be of the opinion that the cause of death appears to be one calling for further inquiry he will withhold the certificate and report the matter to the local coroner. Should this official decide that an inquest is necessary the eventual burial of the body can only take place on the coroner’s order, but if the coroner should decide that an inquest in the particular case is not necessary (see below for the circumstances in which it *must* be held), he will acquaint the medical practitioner as early as possible and the latter will complete and sign the certificate. At the same time the doctor must hand the informant a notice to the effect that he has signed a medical certificate in the case of the person concerned (*f*). [680]

(b) *Registration.*—The death must be registered in the sub-district in which it occurred, and the medical practitioner must deliver, at the earliest opportunity, the “certificate of death” to the registrar of the sub-district. This is required by sect. 6 of the Act of 1926 (*g*), and

(c) The Births and Deaths Registration Act, 1874, s. 10; 15 Statutes 740.

(d) The Births and Deaths Registration Act, 1926, s. 1; 15 Statutes 768.

(e) S.R. & O., 1927, No. 485; 15 Statutes 775; amended by Regs. of 1930; S.R. & O., 1930, No. 39.

(f) For the form of this, see the 1927 Regulations, Fourth Schedule.

(g) 15 Statutes 770.

the certificate should not be handed to the informant, as sect. 20 of the Act of 1874 allowed. (As to the time limit of twelve months with regard to registration, see Article 63 of the 1927 Consolidated Regulations.)

The particulars required by the registrar are contained in nine columns, and cover—date of death; address, name, sex, age and rank or profession of deceased; cause of death (from the certificate mentioned above). The informant signs in column 8, and the registrar should read over to him the particulars he has entered and make any corrections that may be necessary (*h*). The signature and official description of the registrar follow. The registrar then issues without fee to the informant a certificate that he has registered the death (*i*). Copies of the registration entry (necessary for various purposes, *e.g.* where the deceased is an annuitant, pensioner, or the holder of a life insurance policy and proof of death is needed) can, however, be obtained for a fee of two shillings and sevenpence, but various enactments provide for cheaper certificates in special cases. [681]

(c) *The Burial*.—The person procuring the burial having the registration certificate is now in a position to make arrangements for the sepulture. It may be that such requires the purchase of a new grave space, or necessitates the re-opening of an existing one. It is customary to leave in the undertaker's hands a great part of the arrangements which would otherwise fall upon the person performing the duties he may have legally acquired (as executor), or assumed as a friend. Assuming that it has been decided that the burial shall take place in a burial ground or cemetery belonging to a local burial authority the executor will be handed a table of fees covering charges for vaults or brick graves and "re-openings." Such fees will vary in the case of earth graves, being divided into classes according to their position. For this purpose the grave plan (*k*), which may be seen either at the office of the burial authority, or at the superintendent's office at the cemetery, will be consulted. Should it be necessary to re-open a vault or grave, the deed acknowledging the right must be produced (*l*). The table of fees will contain also the charges for erecting, removing, or replacing headstones, for planting and turfing, and various other matters authorised by the cemetery authority with (if required) the proper statutory approval, and will provide also for a copy of the entry in the register of burials (*m*). The undertaker will, if required, make all arrangements through the burial authority for the attendance of a minister of religion at the burial in accordance with the practice at the cemetery or burial ground (*n*).

The actual burial will now proceed in accordance with the bye-laws and regulations concerning burials in the particular cemetery or burial ground (*o*). Notice of interment will have to be given on the proper forms; at the same time the undertaker will discharge all fees due. The burial cannot, in theory, take place without the production of the registrar's certificate or coroner's order for burial. In practice, however, the burial authority will (in the proper circumstances) accept a declaration in the form allowed by sect. 1 (1) of the Births and Deaths

(*h*) Directions as to the keeping of the registers are given by Part III. of the 1927 Consol. Regs.; 15 Statutes 779.

(*i*) "The Certificate for Disposal after Registry," 1927 Consol. Regs., Art. 84 (2); 15 Statutes 800.

(*k*) See *ante*, pp. 337 *et seq.*

(*l*) See *post*, p. 349.

(*n*) See *ante*, p. 340.

(*m*) See *ante*, p. 338.

(*o*) See *ante*, pp. 339 *et seq.*

Registration Act, 1926 (*p*), that such a certificate or coroner's order has been given, and stating the reason for its non-production. The form used, which must be signed by the declarant, contains an intimation that the document referred to (or a duplicate thereof) must be sent to the authority as soon as possible, and that failure on the part of the responsible person to produce it will render him liable on summary conviction to a penalty of 40s.

Whenever an interment takes place without the production of the certificate or order it is usual for the clerk to the burial authority to give warning at once, to the undertaker or person procuring the burial, of the statutory penalty for failing to produce the document.

The incidents of a burial, which, for purposes of comparison has been termed "regular," have been treated above. It will now be necessary to discuss the practice in cases where the medical practitioner's certificate of death points to the desirability of extra precautions, or further proceedings are occasioned by default in some particular or other. [682]

(d) "*Irregular*" Certification.—1. In a case where within twelve months of a death (and fourteen days have expired) a registrar learns of a death, but has received no particulars of the same, he must send, on a form provided by the Registrar-General, a requisition to the person he believes can best supply the information. For this purpose the 1927 Regulations give lists of persons, in varying degrees of responsibility, who can be called upon for this purpose, according to whether the death took place in a house, in a public institution, or where a death was not in a house and a body was found exposed (*q*). If after making a second requisition the registrar fails to obtain the information he requires, the matter must be reported to the Registrar-General. [683]

2. In a case where a registrar is informed of a death or a finding of a body *after* twelve months of either event, he must report the facts to the Registrar-General. On receiving from him a written authority to register (which must be preserved), he arranges for the informant, and the superintendent registrar to be present at his office and then proceeds to fill in the register in the ordinary way, except that in column 8 he adds, "on the authority of the Registrar-General," and the superintendent registrar also signs in column 9 (*r*). [684]

B. Burial with Reference to Coroner : Registration of Stillbirths and Deaths.—Before registering a death within twelve months of date, or a stillbirth, a registrar must report to the coroner (*s*) :

- (i) A death not attended during last illness by a medical practitioner ; or regarding which he has been unable to obtain a completed medical certificate as to cause of death.
- (ii) A death which he has reason to believe to have been unnatural, or caused by accident, violence or neglect, or attended by suspicious circumstances, or the cause of which appears to be unknown.
- (iii.) A death due to one of a large number of causes which include abortion, industrial disease of the lungs, food and other forms of poisoning.

(*p*) 15 Statutes 768. The form prescribed is printed *ibid.*, p. 814.

(*q*) Art. 61 of the 1927 Regulations (S.R. & O., 1927, No. 485) ; 15 Statutes 791.

(*r*) *Ibid.*, Arts. 73, 74 and s. 15 of the Births and Deaths Registration Act, 1874; *ibid.*, 741, 795.

(*s*) See 1927 Regulations (S.R. & O., 1927, No. 485), Art. 75, *ibid.*, 795.

- (iv.) A death after an operation necessitated by injury, or under an operation or an anæsthetic.
- (v.) A death where the deceased was not seen by the certifying medical practitioner *after death*, nor within fourteen days before death.
- (vi.) An alleged stillbirth where the registrar has reason to believe that the child was born alive.

In these cases the registrar must make a report on the form provided by the Registrar-General. Furthermore, if the registrar has reason to believe the circumstances of a death are such that some other person besides himself should report to or notify the coroner, he must satisfy himself that this has been done. A registrar must not register a death or stillbirth which he has reported to a coroner (as in the preceding paragraph) until he has received a coroner's certificate or a notification that the coroner does not intend to hold an inquest.

When a registrar, however, is informed by a coroner that the latter does not intend to hold an inquest on a death or stillbirth the registrar must proceed to register the death, etc., in the usual way, subject to certain modifications (*t*). Such a notification as the above must be in writing, and this, with every coroner's certificate of cause of death after post-mortem without inquest, must be delivered to the superintendent registrar. [685]

(a) *Registration in Cases where an Inquest has been held* (*u*).—A registrar must not register a death or stillbirth of which he is informed that a coroner intends to hold an inquest, until he has received the coroner's certificate. If the same is not received within a certain time after the inquest he must report the matter to the Registrar-General. If the place of death of the deceased is unknown, the death is registered for the sub-district where the inquest was held.

Where it appears from a coroner's certificate that a child, on whom an inquest has been held, was stillborn or that there is not sufficient evidence of it having been born alive, the registrar must register the death with the modifications shown in Art. 79 (*a*) to (*e*). In column 6 (Signature, Description and Residence of Informant) "Coroner . . ." is to be entered, while in column 8 (Nature of Evidence upon which registered as Stillborn) the words, "Coroner's . . . Certificate after Inquest held . . ." followed by date of inquest (*a*) must be written.

Registration in a case where the registrar obtains a certificate from a coroner after an inquest has been adjourned under sect. 20 of the Coroners (Amendment) Act, 1926 (*b*), and not resumed, is provided for in Art. 81.

When the entry of a stillbirth or death is complete, the registrar notes upon the coroner's certificate the number of the place of entry in the register and the name of the sub-district (if not already entered by the coroner) and sends to the superintendent registrar the coroner's certificate.

In a case in which a registrar receives a coroner's certificate upon an inquest on a stillbirth or death *which he has previously registered*, he can (and must) make a fresh entry in the manner prescribed for entries

(*t*) 1927 Regulations (S.R. & O., 1927, No. 485), Art. 76 (1); 15 Statutes 796.

(*u*) *Ibid.*, Arts. 78—83; *ibid.*, 797.

(*a*) As to entry in register of burials of a stillborn, see "Management of Burial Grounds," *ante*, p. 338.

(*b*) 3 Statutes 789.

on a coroner's certificate, and add a note "Re-registered on coroner's certificate at entry No. . . ." (c).

[NOTE.—Part III. of the 1927 Regulations contains general directions for the keeping of registers, the manner and form, the treatment of incomplete entries, corrections of errors, etc., and provides (Art. 20) for the delivery of filled register books to the superintendent registrar, and the preparation of indexes]. [686]

(b) *Certificates for Disposal*.—(1) *After Registry*.—The certificate given by the registrar that he has registered a death is now known as "the certificate for disposal after registry" (d), and is given on the form provided by the Registrar-General. [687]

(2) *Before Registry*.—This certificate, which must also be on a provided form, is given by the registrar to the effect that he has received notice of a death (e).

In a case in which the registrar knows, or has reason to know that it is, or will be his duty, or the duty of any other person to report a death to the coroner, or knows or has reason to believe that the death has been or will be so reported (generally by the medical practitioner) and so has notified the coroner that he is unable to complete the medical certificate of the cause of death, the registrar will refuse to give the "certificate for disposal before registry" in respect of that death unless and until he is informed by the coroner that he does not intend to hold an inquest on the body: neither will he give such certificate unless the circumstances of the death within his own knowledge are such that, on the attendance of a qualified informant, he would be able to proceed with the registration of the death (e).

In practice, when the medical practitioner concerned desires to report the matter of a death to the coroner, he acquaints (as a matter of convenience) the coroner's officer. It is hardly necessary to add that the coroner makes no delay in coming to a decision.

Where a coroner issues an order authorising burial he must give it to the relative of the deceased or other person who is about to cause the body to be buried, or to the undertaker (f), and every order contains a detachable portion on which the person effecting the disposal of the body can insert the details required by sect. 3 (1) of the Births and Deaths Registration Act, 1926 (g).

It should be noted that where a registrar is informed that it is intended to cremate the body of a deceased person he will not give the "certificate for disposal before registry." (As to the procedure in such cases, see title CREMATION.)

In a case where a body is brought into England, and the death is such that there is no liability for registration under the Registration Acts, the registrar will give a certificate to that effect (h) for which a fee of five shillings is payable.

By sect. 3 (1) of the Registration, etc., Act, 1926, a notification as to the date, place and means of disposal of the body of a deceased person has to be delivered to the registrar by the person effecting the disposal (the undertaker). The form of such a certificate of disposal is prescribed by the Seventh Schedule of the 1927 Consolidated Regulations (i).

(c) Registration, etc., Consol. Regs., 1927, Arts. 82, 83; 15 Statutes 800.

(d) *Ibid.*, Art. 84 (2); *ibid.*

(e) *Ibid.*, Art. 84 (3); *ibid.*

(f) Coroners' Rules, 1927 (S.R. & O., 1927, No. 344/L. 13), Art. 5; 3 Statutes 800.

(g) 15 Statutes 769.

(h) See the 1927 Consol. Regs., Art. 85 and Sched. VI. for the statutory form; *ibid.*, 800, 814.

(i) *Ibid.*, 814.

The registrar is under an obligation to keep a record in a form supplied by the Registrar-General of the issue of certificates for disposal or coroner's orders for burial, or certificates for cremation, in the order in which he issues them, and on receiving a "notification of disposal" must complete the record (*k*). He must also note the issue of a duplicate certificate in a separate register.

If fourteen days elapse from the date of the registrar's certificate or coroner's order without receipt of the "notification of disposal" the registrar must make inquiry as to the cause of the delay (*l*), and should he then be informed that the body has not been disposed of, he must report the matter to the M.O.H. for the district (*l*). Should it then appear that disposal has been effected without the statutory notification to him he must forthwith report the matter to the Registrar-General (*m*).

[NOTE.—Certificates in the case of stillbirths are given on separate forms provided by the Registrar-General.] [688]

5. BURIAL OF THE POOR

The Poor Law Act, 1930 (*n*).—The Poor Law Act, 1930 (*n*), contains provisions as to the burial of persons who were receiving poor relief (*o*). As successors to the guardians, the obligation of providing, as occupiers of their poor law institutions, for the burial of poor persons dying therein, is also cast upon the councils of counties and county boroughs (*p*).

Generally, a county or county borough council may bury the body of a poor person which may be within their area, the expenses falling upon the county fund or general rate fund (*q*), and the council may also pay the costs of the burial of any poor person dying outside the county or county borough, who at the time of his death was in receipt of relief from the council, *i.e.* receiving non-resident relief.

As to the place of burial, sect. 75 (2) of the Act of 1930, requires that in all such cases the body must be buried either (i.) in the burial ground of the parish where the death occurred; or (ii.) if the death did not take place in a workhouse or separate school, and the dead person at the time of his death resided in a parish within the county or county borough, in the burial ground of that parish; (iii.) if the death occurred in a workhouse and the deceased before his removal thereto resided in a parish within the county or county borough, in the burial ground of that parish; or (iv.) if the death occurred in a separate school, in the burial ground of the parish from which the deceased was sent to the school, or, if he was sent to the school from a workhouse, in the burial ground of the parish from which he was sent to the workhouse; (v.) if, however, the council have acquired under sect. 6 of the Burial Act, 1857 (*r*), or sect. 77 of the Poor Law Act, 1930, a right to bury in a burial ground, the deceased may be buried there unless he in his lifetime, or his wife, husband, or next-of-kin has expressed a desire to the contrary (*s*).

(*k*) 1927 Consol. Regs., Art. 87 (2) (3); 15 Statutes 801.

(*l*) S. 3 (2) of the Births and Deaths Registration Act, 1926; *ibid.*, 769.

(*m*) 1927 Consol. Regs., Art. 87 (5) (6).

(*n*) 12 Statutes 968 *et seq.*

(*o*) *Ibid.*, ss. 75—78; 12 Statutes 1005.

(*p*) *R. v. Stewart* (1840), 12 Ad. & El. 773; 7 Digest 522, 13.

(*q*) Ss. 75, 117. The latter is in part repealed by L.G.A., 1933, and replaced by ss. 180, 181, 183, 185, 187 of that Act; 26 Statutes 404—408.

(*r*) 2 Statutes 229.

(*s*) Poor Law Act, 1930, s. 75 (2) (e).

In the first four cases above if the burial ground mentioned has been closed and no other provided, or if owing to the crowded state of the ground the council consider that interment there would be improper, deceased may be buried in the burial ground of some neighbouring parish (*t*). If the deceased in his lifetime, or the wife, husband, or next-of-kin of the deceased, has expressed a desire to that effect, then, subject to the provision just mentioned, the burial is to take place in the burial ground of the parish in which deceased resided at the time of his death, or if the death occurred in a workhouse or separate school, in the burial ground of the parish in which the council are empowered to bury him in case (*iii.*) or case (*iv.*) above.

If the deceased in his lifetime, or the wife, husband, or next-of-kin of the deceased, has expressed a desire that the burial shall take place in any particular burial ground (whether such a burial ground as is mentioned in the section or not), nothing in the section is to prevent the council from burying the body in that burial ground (*u*). [689]

Expenses of Burial.—In the cases mentioned above the proper burial fees are to be paid to the person legally entitled to them, and for determining the amount of such fees, a death in a workhouse, etc., is deemed to be a death in the parish in which the body is buried (*a*). The council may also, when necessary, pay the expenses of burial of any *idiot*, *imbecile*, or *insane* person in receipt of relief, sent to an establishment for idiots or to a workhouse of another county or county borough (*b*).

The county or county borough may reimburse themselves for the expenses of the burial out of deceased's assets (*c*), and the cost of the burial of a person is recoverable in the same way as the cost of any relief that might have been given to him when alive would have been recoverable (*d*).

No officer concerned with the relief of the poor is to derive any profit from the burial. He must not act as undertaker for reward, or receive money for the use of the body for medical or anatomical purposes under a penalty not exceeding £5 (*e*).

A county or county borough council may contribute towards the provision or enlargement of a burial ground either in their county or county borough or in the parish in which their workhouse is situated, for the purpose of the burial of their poor (*f*), such sum as may be approved by the M. of H. Similarly with that Minister's approval the same authorities may make agreements with the proprietors of a burial ground (*i.e.* a company, burial board, local authority, committee, etc.), for the burial of their poor.

[NOTE.—The above is only intended to be a résumé of the provisions of the Poor Law Act, 1930, with regard to the burial of poor persons. As to the burial of poor persons generally, including mental patients, see 3 Halsbury (Hailsham ed.), pp. 604 *et seq.*] [690]

6. BURIAL OF THE ASHES AFTER CREMATION

After the cremation of the remains of a deceased person, the ashes must be given into the charge of the person who applied for the cremation, if he so desires. If not, they are retained by the cremation

(*t*) Poor Law Act, 1930, s. 75 (2) and proviso (*i.*); 12 Statutes 1005.

(*u*) *Ibid.*, proviso (*iii.*).

(*b*) *Ibid.*, s. 40; 12 Statutes 998.

(*d*) *Ibid.*, s. 76.

(*a*) *Ibid.*, s. 75 (3).

(*c*) *Ibid.*, s. 20 (2).

(*e*) *Ibid.*, s. 78.

(*f*) *Ibid.*, s. 77 (1).

authority, and in the absence of any special arrangement for their burial or preservation, they must be either decently interred *in a burial ground*, or in land adjoining the crematorium reserved for the burial of ashes, or scattered thereon. In the case of ashes left temporarily in the charge of the cremation authority and not removed within a reasonable time, a fortnight's notice must be given to the person who applied for the cremation before the remains are interred or scattered (g).

The destination of the ashes of a person after cremation which are not claimed is clearly expressed by the above paragraph. Assuming, however, that they are claimed by the person who applied for the cremation, one of the methods for their disposal is burial. The ashes, enclosed in a suitable receptacle, may be buried in a grave, the right to burial being obtained in the usual manner. It appears to be the practice in such a case for the burial authority to charge the usual fees due in the case of the burial of a corpse, and presumably the same fee would be demanded if, as is sometimes the case, the urn containing the ashes is built into an existing or new memorial on a grave. Further, where there has been a previous cremation in pursuance of directions left by deceased, there is apparently no legal objection to the ashes being buried in consecrated ground, accompanied by the use of the burial service (h). It should be noted, however, that the incumbent of any ecclesiastical parish is under no obligation to perform a funeral service before, at, or after a cremation. Upon his refusal to do so, any clergyman of the Established Church, not prohibited under ecclesiastical censure, may at the request of the person having charge of the cremation or interment, and with the permission of the bishop, perform the service within the cemetery or burial ground (i).

As to the disposal of an urn containing ashes *in a church* it has been held that it is not forbidden to place this in a church in which burials have been ordered to be discontinued; and in a proper case a faculty may be obtained for the purpose (h). In such a case, however, notice of the burial of the remains should be entered in a parochial burial register to be kept in the church (k). [691]

7. PURCHASE AND TRANSFER OF RIGHTS OF BURIAL

An exclusive right of burial in a burial ground or cemetery (l), conferred by a burial authority, being an incorporeal hereditament in the nature of an easement, requires a deed to complete the title in law (m). It conveys no freehold right in the land specified in the deed, nor of itself the right to erect a gravestone or vault, nor to enter a vault to perform a ceremony (n). It does apparently include, however, a right to plant flowers on the grave and keep the head and curb stones in repair (o). By sect. 34 of the Burial Act, 1852, and sect. 7 of the Burial Act, 1855 (p), subject to the approval of the M. of H. a burial board is entitled to make charges for the exclusive right of burial, etc., and such fees and charges may be altered and revised from time to time

(g) Cremation Regulations, S.R. & O., 1930, No. 1016, Art. 16; 23 Statutes 19.

(h) *Re Dixon*, [1892] P. 386; 7 Digest 563, 383.

(i) Cremation Act, 1902, s. 11; 2 Statutes 284.

(k) As to registration of burials in a churchyard, etc., see *ante*, p. 334.

(l) *Bryan v. Whistler* (1828), 8 B. & C. 288; 7 Digest 530, 97.

(m) 3 Halsbury (Hailsham ed.), 579.

(n) See *Hoskins-Abraham v. Paignton U.D.C.*, [1929] 1 Ch. 375; Digest (Supp.).

(o) *Ashby v. Harris* (1868), L. R. 3 C. P. 523; 7 Digest 543, 230; but see *McGough v. Lancaster Burial Board* (1888), 21 Q. B. D. 323; 7 Digest 543, 231.

(p) 2 Statutes 202, 220.

with the approval of the M. of H. Power to sell, either in perpetuity or for a limited time, an exclusive right of burial in a cemetery provided under the P.H. (Interments) Act, 1879, is given by sect. 40 of the Cemeteries Clauses Act, 1847 (*g*), and no approval of the Minister is needed. [691A]

Forms.—A few forms, including (1) model deed of conveyance, (2) an assignment of burial rights, and (3) a statutory declaration and an indemnity for use in the case of loss of the grant by the grantee, are appended.

(1) With regard to the conveyance the following points should be noted :

A. Identification is easy.

B. The right to place a monument, gravestone, etc., is included.

C. The capacity of the grave space concerned is clearly stated, the dates, etc., of interments are entered upon it (and also upon the register at the office of the authority), so that it can be discovered at a glance what space is still available, if any.

D. As the document must be produced before the grave will be opened for an interment, the risk of any mistake is most remote (*r*).

On a grant being made, the original holder is asked to sign the register of burials as having received the deed, or failing that, his written acknowledgment is pasted into the same record.

The form of deed printed below is that suggested for Church of England or Nonconformist parishioners, etc. Should the grave space be situate in a part of the ground reserved for Roman Catholics, the following proviso is inserted, in order to satisfy the stipulation made at the time of consecration by the Roman Catholic Bishop, etc. (*s*).

Provided always that no body shall at any time hereafter be interred in the said grave except that of a person who at the time of his or her death was a member of the Roman Catholic Church, and that if any dispute shall arise as to whether any person proposed to be interred in such grave was at the time of his or her death a member of the said Church the decision of the Roman Catholic Bishop of or of his Vicar-General (or in the event of there being no Roman Catholic Bishop at the time of the Vicar Capitular or other Roman Catholic Clergyman who in accordance with the regulations of that Church for the time being has general control of Roman Catholic affairs over an area within which the said Cemetery is situated) on the point shall for the purposes of such interment be final.

DEED OF GRANT OF EXCLUSIVE RIGHT OF BURIAL

..... BOROUGH COUNCIL .

Town Clerk.

Ground.

By virtue of the provisions of the Burial Acts, 1852 to 1906, **We**, the Mayor, Aldermen and Councillors of the (hereinafter called the Council) being the Authority for the execution of the said Acts within the said Borough in consideration of the sum of pounds shillings pence, to us paid by of (hereinafter called the grantee) **Do** hereby grant this day of 19...., unto the grantee the exclusive right of Burial in a piece of ground six feet six inches in length and two feet six inches in breadth, parcel of the Burial Ground of the said Borough situate in the Parish of in the County of and shown in the Register of graves kept by the Council as follows :—

Vol...... **p.**..... **Sec.**..... **No.**..... **Class.**.....
and also the right to place a monument gravestone kerbing tablet or monumental inscription on such piece of ground.

(*g*) 2 Statutes 264.

(*r*) For the course to be taken if the document cannot be found, see *post*, p. 351.

(*s*) See *ante*, p. 327.

To hold the same to the grantee in perpetuity for the purpose of Burial subject to such Rules and Regulations as have been or shall from time to time hereafter be made by the Council or other competent authority in that behalf for the management regulation and control of the said Burial Ground and subject to such fees and payments as shall from time to time be fixed and settled by the Council in relation to Burials or other matters which may affect the said piece of ground.

Provided that no monument gravestone kerbing tablet or inscription shall be placed on such piece of ground except with the previous approval of the Council that every such monument gravestone kerbing tablet or inscription shall be kept in repair at the expense of the grantee or other the person or persons in whom for the time being the right hereby granted shall be vested and that the Council shall have the right to remove any monument gravestone kerbing tablet or wreath which in their opinion has become unsafe or dilapidated or unsightly or which is not kept in proper repair.

NOTE.—The grave referred to in this Deed of Conveyance is intended for not more than.....Interments and the Deed must be produced before the grave can be opened.

Interment	Register No.	Date	Name
First			
Second			
Third			
Fourth			
Fifth			

The Common Seal of the above-named Mayor, Aldermen and Councillors has been hereto affixed by order of the Council in the presence of

Town Clerk.

[692]

(2) With regard to the assignment an endorsement in the Register of graves should be made as soon as the rights are transferred.

..... BOROUGH COUNCIL

I.....of.....in consideration of the sum ofpounds paid to me byof (hereinafter called the purchaser) do hereby assign unto the said purchaser the exclusive right of burial in a piece of ground, *etc. (as in Deed of Grant, supra)*, which was granted toof in perpetuity by the Mayor, Aldermen and Councillors of.....by a deed of grant bearing date.....day of.....19...., and all my estate title and interest therein to hold the same unto the said purchaser in perpetuity subject to the conditions on which I held the same immediately before the execution hereof and I hereby certify that the transaction does not form part of a larger transaction or a series of transactions in respect of which the amount or value or the aggregate amount or value of the consideration exceeds £500.

Witness my hand and seal this.....day of.....19....

Signed Sealed and Delivered by the above-named vendor in the presence of: }

Seal

Witness's Name

Address

Occupation

[693]

(3) As pointed out *ante*, p. 350, the grant must be produced before the grave is opened, but these grants are sometimes lost. It is suggested that the use of the following statutory declaration and indemnity will obviate some of the inconvenience resulting from such a loss

(a) Statutory declaration :

..... BOROUGH COUNCIL

I, of
do solemnly and sincerely declare :—

1. That I am the person entitled to exercise the right of burial in
(*description of grave as in Deed of Grant*).

2. That the Deed of Grant made out in (my) (the name of)
has been lost and notwithstanding an exhaustive search for it amongst all the papers
in my possession or custody the said Deed of Grant has not been found by me and
I verily believe the same has been lost and cannot be found.

And I make this solemn declaration conscientiously believing the same to be true
and by virtue of the Statutory Declarations Act, 1835.

Declared at this day of 19

Before me,

A Commissioner for Oaths
or Justice of the Peace.

[693A]

(b) Indemnity :

..... BOROUGH COUNCIL

This Deed of Indemnity is made the day of 19

Between of
(hereinafter called the Claimant) of the one part and the Mayor, Aldermen and
Councillors of the acting as the Burial Board for
the said (hereinafter called the council) of the other
part.

Whereas the Claimant has by a statutory declaration made the
day of 19 declared himself to be the person entitled to
exercise the rights of burial in the grave (*description of grave as in Deed of Grant*)

And the Council in pursuance of such declaration are prepared to allow the said
Claimant to exercise such right subject only to his executing this Deed of Indemnity.
Now this Deed witnesseth as follows :—

1. The Claimant hereby agrees that in consideration of his being allowed to
exercise the right of burial in the grave aforesaid he and his successors in title will
indemnify the Council against all claims demands charges costs expenses actions or
losses which the Council may suffer by reason of the exercise of the said right.

IN WITNESS whereof the Claimant has hereunto set his hand and seal the day
and year first before written.

Signed Sealed and Delivered by the
Claimant in the presence of :

} Seal

Witness's Name

Address

Occupation

[694]

London.—In the administrative county of London the metropolitan
borough councils and the common council of the City of London are
the authorities for providing burial grounds under the Burial Acts,
1852 to 1906. [694A]

BURNHAM SCALES

See TEACHERS.

BUTTER, MARGARINE AND CHEESE

	PAGE		PAGE
INTRODUCTORY - - -	353	COMPOSITION OF MARGARINE -	355
SPECIAL POWERS OF SAMPLING		MARGARINE FACTORIES, ETC. -	356
OFFICERS - - -	354	LABELLING AND MARKING OF	
SAMPLING OF BUTTER, ETC. -	354	MARGARINE - - -	356
COMPOSITION OF BUTTER -	354	CHEESE AND MARGARINE-CHEESE -	358
BUTTER BLENDED WITH MILK -	354	LONDON - - -	358
REGISTRATION OF BUTTER FAC-			
TORIES - - -	355		

<i>For Administrative Authorities</i>	-	<i>See title</i>	FOOD AND DRUGS AUTHORITIES.
<i>Adulteration of Butter, etc.</i>	-	"	ADULTERATION OF FOOD.
<i>Decomposed and Unsound Butter</i>	-	"	UN SOUND FOOD.
<i>General Position</i>	-	"	FOOD AND DRUGS.
<i>Marking of Imported Butter</i>	-	"	IMPORTED FOOD.
<i>Preservatives and Colouring Mat-</i>			
<i>ter in Butter, Margarine, etc.</i>	-	"	PRESERVATIVES.
<i>Sale of Butter, etc., by weight</i>	-	"	WEIGHTS AND MEASURES.

See also titles :

ARTIFICIAL CREAM ;
CONDENSED MILK ;
CREAM ;

ICE CREAM ;
INSPECTORS OF FOOD AND DRUGS ;
MILK AND DAIRIES ;
SAMPLING OF FOOD AND DRUGS.

Introductory.—The sale of butter, margarine and cheese is subject to the general provisions of the Food and Drugs (Adulteration) Act, 1928 (a), under which it is an offence to sell any article of food which is not of the nature, substance or quality demanded or has been mixed with a foreign ingredient so as to be rendered injurious to health. In addition, Part II. of that Act contains special provisions applying to butter, margarine and cheese, and also to milk-blended butter and margarine-cheese. In sect. 29 of the Act (b), special conditions are set out under which a warranty may be pleaded as a defence, an invoice being available as a warranty if a defendant has purchased margarine or milk-blended butter under the name of butter or margarine-cheese under the name of cheese. Further, an employer summoned for an offence under Part II. of the Act may avail himself of the right to summon the actual offender (c), although no such right is given to a person charged under sects. 1 to 5 of the Act. There are also special rules (d) for determining whether offences under Part II. of the Act are second or subsequent offences. All these special provisions appear in the Act in consequence of the fact that it is a consolidating statute, which re-enacted, substantially without amendment, a number of older Acts in which special restrictions on the manufacture, importation, storage and sale of butter, margarine, milk-blended butter, and margarine-cheese had been imposed from time to time. [695]

(a) 8 Statutes 884 *et seq.*(c) S. 27 (6) ; *ibid.*, 900.

L.G.L. II.—23

(b) S. 29 (1) (a) ; *ibid.*, 902.(d) Sched. III. *ibid.*, 907

Special Powers of Sampling Officers.—In the ordinary course, sampling officers (*e*) of local authorities find themselves obliged to purchase any samples of food which they wish to obtain. But in the case of butter or cheese or substances purporting to be butter or cheese which are exposed for sale without being labelled as margarine, milk-blended butter, or margarine-cheese, inspectors may take samples for analysis without going through the form of purchase (*f*). Similarly, sampling officers (except market-inspectors and, in London, inspectors of weights and measures) may take for analysis samples from any package in transit on any public conveyance if they have reason to believe that the package contains margarine, margarine-cheese or milk-blended butter which is not consigned in accordance with the statutory requirements (*g*). If the name and address of the consignor appear on the package, one part of the sample, duly sealed and marked, must be forwarded to him (*h*). [696]

Sampling of Butter, Margarine, Cheese, etc.—In a circular (*i*) to Food and Drugs Authorities, the M. of H. has advised that samples of these articles should be placed without paper (since paper acts as an absorbent) in a dry, wide-mouthed stoppered bottle or earthenware jar. It is an advantage to use a screw-capped bottle, provided with a cork-lined metal lid. If the receptacle cannot conveniently be sealed, it should be labelled and then enclosed in an envelope of stout paper secured at the ends with the official seal. [697]

Composition of Butter.—The Minister of Agriculture in 1902 made a Regulation (*k*) providing that butter containing more than 16 per cent. of water is to be presumed not to be genuine until the contrary is proved. It is probably true to say that, except in the case of farm and creamery butter made in the United Kingdom, the contrary cannot be proved. For it is unlawful to import butter containing more than 16 per cent. of water (*l*) and also to have in a butter factory, or to consign therefrom any such butter (*m*), unless it be proved that the butter was not made or treated in the factory.

In sect. 34 of the Act of 1928 (*n*), "butter" is defined as meaning the substance usually known as butter made exclusively from milk or cream, or both. It may not contain fat other than milk-fat. Salt and harmless colouring matters are permitted, but preservatives are forbidden by the regulations made under sect. 7 (2) of the Act (*n*). [698]

Butter Blended with Milk.—It was once a common practice to blend butter with milk, the product containing a lower percentage of milk-fat and a higher percentage of water than normally made butter. Special restrictions were enacted as a result of which milk-blended butter has now virtually ceased to be a commercial product. For that reason the restrictions on the manufacture and sale of the article need not be set out at length. But, briefly, it is requisite that factories of milk-blended butter, and the premises of wholesale dealers, shall be registered with the Food and Drugs Authority (*o*); that records of wholesale consignments shall be kept for inspection (*p*); that all parcels

(*e*) S. 16 (1); 8 Statutes 894.

(*g*) S. 16 (4); *ibid.*, 894.

(*i*) Memo. 36, Foods, 1929.

(*k*) Sale of Butter Regulations, 1902; S.R. & O., 1902, No. 355.

(*l*) S. 12; 8 Statutes 891.

(*n*) S. 34; *ibid.* 905; s. 7 (2); *ibid.*, 889.

(*p*) S. 9; *ibid.*, 890.

(*f*) S. 16 (3); *ibid.*, 894.

(*h*) S. 18 (2); *ibid.*, 896.

(*m*) S. 11; *ibid.*, 891.

(*o*) S. 8; *ibid.*, 890.

and packages shall be conspicuously labelled "Milk-blended butter" (*g*); and that milk-blended butter may not contain more than 24 per cent. of water (*r*). Milk-blended butter does not fall within the statutory definition of margarine (*s*). [699]

Registration of Butter Factories.—All premises on which, by way of trade, butter is blended, reworked, or subjected to any other treatment (but not so as to cease to be butter), must be registered (*t*) with the Food and Drugs Authority in accordance with an Order made by the Minister of Health. In that Order (*u*) forms are given for the certificate of registration and for the method of its endorsement when a factory changes hands. The local authority has no power to refuse registration, and must forthwith notify all registrations to the Minister of Agriculture and Fisheries (*a*). No premises may be used as a butter factory if they communicate otherwise than by a public street with factories of margarine, margarine-cheese or milk-blended butter or with the premises of wholesale dealers in those articles. No substance intended for use in adulterating butter may be kept in a butter factory, and any oil or fat capable of being so used is deemed to be intended for adulterating butter unless the contrary is proved (*b*). Sampling officers of Food and Drugs Authorities may inspect butter factories and take samples when specially authorised to do so by their council (*c*). [700]

Composition of Margarine.—Any substance (other than milk-blended butter) which resembles butter is margarine and must be sold as such (*d*). Margarine may be composed of animal or vegetable fats, or both. It need not contain any animal fat (*e*). It is not open to a vendor to say that margarine containing an excess of water is, by virtue of the statutory definition, genuine margarine, and that it is not adulterated (*f*).

The manufacture and sale of margarine are hedged about with many provisions designed to prevent the substitution of margarine for butter and the adulteration of butter with fat other than milk-fat—either of which constitutes an offence under sect. 2 of the Food and Drugs (Adulteration) Act, 1928. A mixture of butter and margarine is "margarine," and must be sold subject to the regulations which apply to margarine containing no butter-fat at all. But a further provision forbids any margarine to be made or sold, even though duly labelled, if the fat of the sample contains more than 10 per cent. of butter-fat (*g*). On the face of it, this requirement prohibits additions which might increase the value of the margarine to a purchaser; but the object evidently is to prohibit mixtures which would taste so much like butter as to facilitate fraudulent substitution.

Other requirements as to the composition of margarine are that it may not contain a forbidden preservative (*h*); and that margarine stored at a factory or consigned therefrom may not contain more than 16 per cent. of water, though the occupier of the factory may escape

(*g*) S. 6 (5); 8 Statutes 888.

(*r*) S. 11 (2); *ibid.*, 891.

(*s*) S. 34; *ibid.*, 905.

(*t*) S. 8; *ibid.*, 890.

(*u*) Order as to Registration of Butter Factories, etc., 1907; S.R. & O., 1907, No. 1021.

(*a*) S. 8 (2); 8 Statutes 890.

(*b*) S. 10; *ibid.*, 891.

(*c*) S. 22 (2); *ibid.*, 898.

(*d*) S. 34; *ibid.*, 905.

(*e*) *Wilkinson v. Alton* (1908), 99 L. T. 119; 25 Digest 122, 442.

(*f*) *Burton & Sons v. Mattinson* (1902), 86 L. T. 770; 25 Digest 123, 450; *Roberts v. Leeming* (1905), 69 J. P. 417; 25 Digest 88, 150.

(*g*) S. 6 (2); 8 Statutes 888.

(*h*) S. 7 (4); *ibid.*, 890.

conviction if he prove that the margarine was not made or treated in his factory (*i*). Further, no margarine containing more than 16 per cent. of water or more than 10 per cent. of milk-fat may be imported into the United Kingdom (*k*). The Commissioners of Customs and Excise are responsible for enforcing the provisions as to importation and have special sampling duties accordingly (*l*).

There is no specific provision forbidding the sale by retail of margarine containing more than 16 per cent. of water, but this would almost certainly be treated by the courts as an offence. [701]

Margarine Factories, etc.—Margarine factories and the premises of wholesale dealers in margarine must be registered with the Food and Drugs Authority (*m*). The manner of registration and the necessary forms have been prescribed by the Minister of Health (*n*). The local authority must forthwith notify registrations to the Minister of Agriculture and Fisheries (*o*). Occupiers of registered premises must keep accurate and detailed records of consignments of margarine, and these records are open to inspection by officers of the Minister of Agriculture. It has been held in Scotland that the power to inspect these records carries with it the right to take notes therefrom (*p*).

Registered premises are liable to inspection by officers of the M. of A. or M. of H., and these officers may take samples for analysis (*q*). Sampling officers of local authorities, however, have no powers of inspection or sampling at margarine factories. If a local authority wants information as to consignments, the proper procedure is to request the Minister of Agriculture to have an inspection made under sect. 9 of the Act. The Minister has power also to give special authority to his officers to enter unregistered premises and take samples if there is reason to believe that manufacturing or dealing, of a nature to require registration of the premises, is being carried on, or that butter is being made or stored on the premises and that inspection is desirable (sect. 22 (3)). [702]

Labelling and Marking of Margarine.—An elaborate code of rules applies to the marking of margarine, and must be observed by manufacturers, importers, brokers, commission agents, and consignors, as well as wholesale and retail dealers (*r*). Every package containing margarine must have the word "Margarine" marked or branded on the top, bottom and sides, in printed capital letters not less than $\frac{3}{4}$ -in. square. A tub at the back of a counter is a package requiring to be thus marked (*s*). Every parcel exposed for sale by retail must be labelled in printed capital letters, at least $1\frac{1}{2}$ in. square, clearly visible to the purchaser. But a number of pieces piled in a stack may form one "parcel," so that one label on the stack will suffice (*t*). Parcels behind a screen out of the sight of customers are not exposed for sale (*u*),

(*i*) S. 11 (1); 8 Statutes 891.

(*k*) S. 12 (1) (*f*); *ibid.*, 892.

(*l*) S. 16 (4); *ibid.*, 894.

(*m*) S. 8 (1); *ibid.*, 890.

(*n*) Order as to Registration of Margarine Factories, etc., 1900; S.R. & O., 1900, No. 123.

(*o*) S. 8 (2); 8 Statutes 890.

(*p*) *Hart v. Cohen and Van der Laan* (1902), 4 F. (Ct. of Sess.), 445; 25 Digest 126, c.

(*q*) S. 22 (1); 8 Statutes 898.

(*r*) S. 6; *ibid.*, 888.

(*s*) *McNair v. Horan* (1904), 91 L. T. 555; 25 Digest 124, 454.

(*t*) *Parkinson v. McNair* (1905), 93 L. T. 553; 25 Digest 124, 455.

(*u*) *Crane v. Lawrence* (1890), 25 Q. B. D. 152; 25 Digest 124, 456.

but wrapped margarine, on the counter of the shop where customers can see the packets, is still exposed for sale in spite of being in wrappers (a).

Further, margarine sold by retail (except in branded or durably marked packages), must be delivered in a paper wrapper on the outside of which the word "Margarine" must be distinctly and legibly printed in capital letters at least half an inch long. No other printed matter (except a statement of weight) may appear on the outside of the wrapper (or of the outer wrapper if there be more than one). But margarine sold on bread or fish in a restaurant for consumption on the premises need not be sold in marked wrappers (b).

When butter is demanded, and margarine, not so labelled, is sold, it is usual for the sampling officer to prosecute the vendor for the two offences of (i) selling butter not of the nature demanded, and (ii) selling margarine in an unmarked wrapper.

The word "wrapper" has a wide meaning. When a pound of margarine was sold in a cardboard box, to which a folded paper was attached by a paper band, and the word "Margarine" was printed partly on the box, partly on the paper and partly on the band, it was held that the box, paper and band together constituted a "wrapper" (c). It has been held to be an offence to gum on to the wrapper, slips or labels containing other printed matter (even the price), and to print other matter on an opaque inner wrapper covered by a transparent outer wrapper printed with the word "Margarine" only (d), but this decision was given under the corresponding section of the Butter and Margarine Act, 1907 (e), now repealed, which was not worded in precisely the same way as sect. 6 of the Act of 1928; and therefore the authority of the decision now is questionable.

Margarine may not be described on any wrapper, label, advertisement or invoice by any name other than (i) "Margarine" or (ii) a name combining the word "Margarine" with a fancy or descriptive name approved by the Minister of Agriculture, and printed in type not larger than, and in the same colour as, the word "Margarine" (f). The Minister is prohibited from giving his approval to any fancy or descriptive name, if it refers to or is suggestive of butter or anything connected with the dairy interest (g). It has been held in Scotland that a sheriff was justified in finding that the words "mixed with Maypole butter" on a wrapper were part of the name applied to the margarine (h). On the other hand, in an English case (i) the words "churned with fresh milk" were held not to constitute a fancy or descriptive name. In a later Scottish case (k) a full court reviewed these decisions and held by a majority that the words "containing a small quantity of butter" were merely descriptive and did not form part of a fancy name.

Although approved fancy names may be used in invoices and

(a) *Wheat v. Brown*, [1892] 1 Q. B. 418; 25 Digest 124, 457.

(b) *Moore v. Pearce's Dining and Refreshment Rooms, Ltd.*, [1895] 2 Q. B. 657; 25 Digest 124, 458.

(c) *Toler v. Bishop* (1895), 65 L. J. (M. C.) 4; 25 Digest 123, 453.

(d) *Millard v. Alkwood*, [1912] 1 K. B. 590; 25 Digest 124, 461.

(e) S. 8; 7 Edw. 7, c. 21.

(f) S. 6; 8 Statutes 888.

(g) S. 23; *ibid.*, 899.

(h) *Maypole Dairy Co., Ltd. v. Patterson*, [1923] S. C. (J.) 85; 25 Digest 125, s.

(i) *Hawes v. Stephens*, [1924] 2 K. B. 179; 25 Digest 125, 465.

(k) *Somerville and Barr, Ltd. v. Chalmers*, [1925] S. C. (J.) 70; Digest (Supp.).

advertisements, they may not (contrary to the apparent meaning of the sub-section in which they appear) be used on "the wrapper" (l). [702A]

Cheese and Margarine - Cheese.—Cheese may not contain any fat other than milk-fat, and any substance resembling cheese but containing fat not derived from milk, must be sold as "margarine-cheese" (m) under conditions as to labelling and branding exactly similar to those which apply to margarine, the name "Margarine-cheese" being used instead of "Margarine." Factories, and premises of wholesale dealers, must also be registered in the same manner as described above in the case of margarine. The Minister has not exercised his power to prescribe any standards for the percentage of fat, water and other ingredients in cheese. [703]

London.—The law as set out above is equally applicable to the Metropolis, the Food and Drugs Authorities being the Common Council in the City of London and the metropolitan borough councils elsewhere in the administrative county (n). [704]

(l) *Williams v. Baker*, [1911] 1 K. B. 566 ; 25 Digest 125, 463 ; and *Millard v. Allwood*, [1912] 1 K. B. 590 ; 25 Digest 124, 461.

(m) S. 6, and see definition of "cheese" in s. 34 ; 8 Statutes 888, 905.

(n) Food and Drugs (Adulteration) Act, 1928, s. 13 ; *ibid.*, 893.

BUTTER-MILK

See BUTTER, MARGARINE AND CHEESE.

BYE-LAWS

	PAGE		PAGE
INTRODUCTORY - - -	359	(3) Repugnancy to the General Law - - -	368
POWERS OF LOCAL AUTHORITIES		(4) Certainty of Terms - - -	369
TO MAKE BYE-LAWS - - -	361	(5) Ambiguity - - -	369
Good Rule and Government - - -	361	ABROGATION OR WAIVER OF BYE-LAWS - - -	370
Other Bye-laws - - -	361	CONSTRUCTION OF BYE-LAWS - - -	371
PUBLICATION AND CONFIRMATION OF BYE-LAWS - - -	362	PENALTIES FOR BREACH - - -	373
Procedure - - -	362	Imposition - - -	373
Publication of Confirmed Bye-laws - - -	363	Evidence of Bye-laws - - -	373
Bye-laws made but not Confirmed before June, 1934 - - -	364	Recovery of Penalty - - -	374
The P.H. (Confirmation of Bye-laws) Act, 1884 - - -	364	Injunction - - -	374
CHARACTERISTICS OF BYE-LAWS - - -	365	LONDON - - -	375
(1) Reasonableness - - -	365	GENERAL - - -	375
(2) <i>Intra vires</i> of Authority by Whom Made - - -	367	Metropolitan Borough Councils - - -	375
		SUMMARY - - -	376
		(1) L.C.C. - - -	376
		(2) Metropolitan Borough Councils - - -	378

See also titles :

BUILDING BYE-LAWS ;
COMMON LAW CORPORATIONS ;
CONSTITUTIONAL LAW ;
GOOD RULE AND GOVERNMENT ;
MODEL BYE-LAWS AND CLAUSES ;

NUISANCES ;
Ultra vires ;
Also specific titles for particular
bye-law making powers, e.g.
MUSEUMS.

INTRODUCTORY

At the present day the making of bye-laws is almost invariably authorised by statute, and in relation to local authorities a bye-law may be defined as being a local law made, with due legal sanction, by a body of persons in respect of a matter specially referred to that body by Parliament.

Bye-laws, therefore, are one form of that subordinate legislation "conditional on the use of particular powers or on the exercise of a limited discretion" which "it is no uncommon thing to find entrusted by the legislature to persons in whom it reposes confidence" (a). [705]

Rules and regulations are similar forms of the same subordinate legislation ; between them and bye-laws there would appear to be no essential difference, but in the case of some statutes (notably the P.H.A., 1875) a well-marked distinction is drawn, the term "bye-law" being used to denote an ordinance for the breach of which a fine may be recovered and the terms of which must have been approved by a Government department, whilst the terms "regulation" or "rule" are generally restricted to rules, obedience to which is not secured by the imposition of a penalty, and which may be drawn up by the local authority of their own motion. [706]

The present tendency of the legislature in passing bills is to lay down general principles, and to avoid going into administrative details

(a) *R. v. Burah* (1878), 3 App. Cas. 889, per Lord SELBORNE, at p. 906 ; 17 Digest 450, 197.

which would frequently overload the statute. There is an increasing tendency to allow matters of subordinate importance to be dealt with by codes of rules, regulations or bye-laws authorised by the statute. [707]

Delegated authority of this kind must be exercised strictly in accordance with the statutory authorisation (*b*), and in the spirit of the enabling statute (*c*). Statutory rules, orders and bye-laws differ from statutes in that the judiciary may question their validity, and examine if the conditions precedent have been complied with (*d*).

The judiciary may consider if bye-laws are reasonable, and if they fail to comply with such tests as the judiciary may apply, then the court may quash them or treat them as unenforceable (*e*). [708]

There is an old-established doctrine that a body corporate may of their own motion by bye-laws regulate any matter which is relative to the purposes for which they were constituted a corporate body. But it is doubtful whether at the present day this doctrine has any application to councils of boroughs or other local authorities, in view of the numerous instances in which Parliament has conferred on these bodies power to make bye-laws for specific purposes. Again, even a power to regulate their proceedings by standing order has been conferred by statute on borough councils (*f*) and other local authorities, a power which would not be needed, if bye-laws could be made by virtue of the constitution of the council as a corporate body. [709]

A bye-law which requires the confirmation of a government department is often based on a model prepared by that department, or on a bye-law which is in force in a neighbouring borough or district. In general, a draft of any series of bye-laws proposed by a local authority must be open to public inspection for a month before an application for confirmation is made, and notice of the intention to apply for confirmation must be advertised locally (*g*). [710]

There is no discretion latent in a bye-law; it should say what may or what may not be done unequivocally; its terms should be definite and ascertainable by all (*h*). [711]

One of the main reasons for allowing matters to be dealt with by bye-law is that the conditions in boroughs and districts often vary, and the system allows a code suitable to the circumstances of the particular borough or district to be drawn up. Many of the subjects on which bye-laws are authorised by the P.H.A., 1875, originally were regulated by direct enactments in local Acts. But these provisions have been found to impede progress because a provision in an Act of Parliament is too rigid and can be amended only by further legislation, while a bye-law, on the other hand, is elastic, in so far that its terms can, by an exercise of simple machinery, be amended to meet any alteration of conditions or methods, which experience has shown to be needed. [712]

(*b*) *Hacking v. Lee* (1860), 2 E. & E. 906; 13 Digest 556, 1133; *Re Davis, Ex parte Davis* (1872), 7 Ch. App. 526; 42 Digest 783, 2132.

(*c*) *Richards v. A.-G. of Jamaica* (1848), 6 Moo. P. C. C. 381; 42 Digest 782, 2114; *Schneider v. Batt* (1881), 8 Q. B. D. 701, 705; 42 Digest 784, 2141.

(*d*) Such as publication, *Drew v. Harlow* (1875), 39 J. P. Jo. 420; 22 Digest 315, 3079; *Timothy v. Fenn* (1910), 74 J. P. 123; 22 Digest 315, 3080.

(*e*) See *post*, p. 364.

(*f*) Municipal Corpn. Act, 1882, para. 13 of Second Schedule; 10 Statutes 660 (replaced by L.G.A., 1933, para. 4 of Part V. of Third Schedule; 26 Statutes 501).

(*g*) See *post*, p. 362.

(*h*) See *post*, p. 368.

Model bye-laws for the control of new streets and buildings and more than twenty other subject-matters, under the P.H.A., 1875, were first issued by the Local Government Board in 1877. The building bye-laws have been drastically revised on numerous occasions as building science has progressed (*i*), and are dealt with in the title BUILDING BYE-LAWS. [713]

Bye-laws made under statutory powers do not bind the Crown unless this is expressly or implicitly authorised by the statute (*k*). [714]

POWERS OF LOCAL AUTHORITIES TO MAKE BYE-LAWS

Good Rule and Government.—By sect. 23 of the Municipal Corpn. Act, 1882, an extensive power of making bye-laws for the good rule and government of a borough and for the prevention and suppression of nuisances was conferred on borough councils. This power was extended to county councils by sect. 16 of the L.G.A., 1888, but the interaction of these sections and sect. 187 of the P.H.A., 1875, was by no means clear. All three sections are repealed by the L.G.A., 1933 (except as to London). Sects. 249 and 250 (*l*) of that Act provide that bye-laws as to both good rule and government and nuisances shall be subject to confirmation by the Home Secretary, unless they relate to public health or to any other matter, which in the Home Secretary's opinion and that of the M. of H., concerns the functions of the latter rather than those of the former, in which event the Minister is the confirming authority (*m*). The validity of a bye-law is not to be questioned in any legal proceedings on the ground that the Home Secretary or the Minister, as the case may be, was not the confirming authority in relation to the bye-law (*n*). Sub-sect. (5) of sect. 249 also confers on urban and rural district councils a new power of enforcing any bye-laws made under the section by a county council which may be in force in the whole or any part of their district.

These bye-laws are further dealt with in the titles GOOD RULE AND GOVERNMENT and NUISANCES.

It will be seen from the later portions of this title that owing to the nebulous character of the power of making bye-laws given by sect. 23 of the Municipal Corpn. Act, 1882, and sect. 16 of the L.G.A., 1888, several legal decisions have been given illustrating the characteristics which a valid bye-law must possess. [715]

Other Bye-laws.—The powers of making bye-laws given by the P.H.A., 1875 to 1932, are numerous (*o*), but convey a mere indication of the scope of the bye-laws authorised. This will best be shown by a reference to the title BUILDING BYE-LAWS which reproduces the various enactments authorising bye-laws as to new streets and buildings, and to sect. 80 (common lodging-houses) and sect. 113 (offensive trades) of the P.H.A., 1875 (*p*). [716]

(*i*) See a paper by A. N. C. Shelley, M.A., B.C.L. (M. of H.), R.I.B.A. Journal, 1922, December 23, and the title BUILDING BYE-LAWS, *ante*, at p. 298.

(*k*) *Gorton Local Board v. Prison Commrs.* (1887), reported, [1904] 2 K. B. 165, n.; 42 Digest 690, 1050; *Cooper v. Hawkins*, [1904] 2 K. B. 164; 42 Digest 692, 1075.

(*l*) 26 Statutes, title "Local Government."

(*m*) L.G.A., 1933, s. 249 (2).

(*n*) *Ibid.*, s. 249 (3).

(*o*) See 13 and 25 Statutes, title "Public Health." Power to make bye-laws on various subjects is given by sects. 44, 80, 90, 113, 141, 157, 164, 169, 171, 172 and 314 of the P.H.A., 1875, and in addition by other provisions of amending Acts. All these bye-laws are subject to confirmation by the M. of H.

(*p*) 13 Statutes 658, 671.

Of the other bye-law-making powers which affect a large class of the community, the power of making bye-laws under sect. 46 of the Education Act, 1921 (*g*), as to the attendance of children at public elementary schools, subject to the confirmation of the Board of Education, under the Advertisements Regulation Acts, 1907 and 1925 (*r*), regulating the exhibition of advertisements, and under sect. 10 (*s*) of the Petroleum (Consolidation) Act, 1928, regulating the appearance and prohibiting the establishment of petrol filling stations (see title PETROL FILLING STATIONS), are perhaps the most important. Both advertisement bye-laws and petrol station bye-laws are subject to the Home Secretary's confirmation. [717]

A power to make bye-laws is often given by local Acts. [718]

PUBLICATION AND CONFIRMATION OF BYE-LAWS

Procedure.—The L.G.A., 1933, which repeals the greater part of sect. 184 of the P.H.A., 1875 (*t*), and the whole of sect. 23 of the Municipal Corpn. Act, 1882 (the two codes in force before June 1, 1934), provides by sect. 250 (*u*) a code which is applied to bye-laws made under the powers set out below and can conveniently be applied by any future Act authorising the making of bye-laws. The unrepealed portion of sect. 184 provides that bye-laws made by a local authority under the P.H.A., 1875, shall not take effect until they have been confirmed by the Minister of Health. In applying sect. 250 in any future Act it will be necessary to specify only the purposes for which the bye-laws are authorised and the Government department by whom they are to be confirmed. Sect. 250 applies to any bye-laws made by a county council, borough council, district council or parish council after June 1, 1934, under :

- (1) The L.G.A., 1933, or the P.H.A., 1875 to 1932, except bye-laws as to wires in streets made under sect. 13 of the P.H.A. Amendment Act, 1890 (*a*).
- (2) Any enactment in force on June 1, 1934, and incorporating or applying sects. 182 to 186 of the P.H.A., 1875, or any of them, or sect. 23 of the Municipal Corpn. Act, 1882, or sect. 16 of the L.G.A., 1888.
- (3) Any local Act passed before August 11, 1875, being bye-laws for a purpose for which, or similar to which, bye-laws may be made under the P.H.A., 1875 to 1932 (*b*).
- (4) Any enactment passed after June 1, 1934, and conferring on any of the councils above-mentioned a power to make bye-laws.

A few amendments of the pre-existing law were introduced into sect. 250 of the Act, to which attention will presently be drawn. [719]

The bye-laws must be made under the common seal of the council, or in the case of bye-laws made by a parish council under the hands and seals of two members of the parish council (sect. 250 (2)) (*u*). This exception is needed because a parish council have no common seal, see sect. 48 (3) of the Act (*bb*). [720]

Bye-laws have no effect until they have been confirmed by the

(*g*) 7 Statutes 155.

(*s*) *Ibid.*, 1176.

(*u*) 26 Statutes 440.

(*a*) 13 Statutes 828. These bye-laws are confirmed by the Minister of Transport, and s. 13 is complete in itself.

(*b*) See s. 249 of the L.G.A. 1933; 26 Statutes 439, authorising bye-laws for good rule and government, etc.

(*r*) 13 Statutes 908, 1118.

(*t*) *Ibid.*, 705.

(*bb*) 26 Statutes 329.

authority by whom they are to be confirmed. At least one month before application for confirmation is made, notice of the intention to apply for confirmation must be given in one or more local newspapers circulating in the area to which the bye-laws apply (sect. 250 (3)). For at least one month before any such application is made, a copy of the proposed bye-laws must be deposited at the offices of the council, and be open at all reasonable hours to public inspection without payment (sub-sect. (4)). The council must, on application, furnish to any person a copy of the proposed bye-laws, or of any part thereof, on payment of such sum not exceeding 6*d.* for every 100 words contained in the copy as the council may determine (sub-sect. (5)). [721]

Bye-laws should not be adopted and sealed by a council before a draft of the proposed series has been submitted to the Government department concerned for their preliminary approval. It is desirable that this draft should be based on a model series issued by the department, if one has been drawn up, any additional clauses being interleaved (*c*). The M. of H. have issued detailed instructions (*d*) with regard to the submission of bye-laws for confirmation and these should be carefully studied and strictly complied with.

The confirming authority may confirm or refuse to confirm any bye-law submitted under sect. 250 (*e*) of the Act and may fix the date on which the bye-law is to come into operation, but if no date is fixed the bye-law comes into operation at the expiration of one month from the date of its confirmation (sub-sect. (6)). This is a new provision. [722]

Publication of Confirmed Bye-laws.—A copy of the bye-laws, when confirmed, is to be printed (*f*) and deposited at the offices of the council, and is at all reasonable times to be open to public inspection, without payment (sub-sect. (7)). A copy of the bye-laws is, on application, to be furnished to any person on payment of such sum, not exceeding 1*s.* a copy, as the council may determine (*ibid.*). Sect. 185 of the P.H.A., 1875 (*g*), allowed any ratepayer of the borough or district to obtain a copy of confirmed bye-laws free of charge. As sect. 185 is repealed by the L.G.A., 1933, and sect. 250 of that Act applies only to bye-laws to be made by a council, a point will arise whether a ratepayer can demand to be supplied, free of charge, with a copy of any bye-laws made before June 1, 1934. It is suggested that the best course is to treat this right as a right or privilege acquired or accrued under the repealed enactment, and thus saved by sect. 38 (2) of the Interpretation Act, 1889 (*h*), and to supply copies of the bye-laws without charge to ratepayers. Sect. 250 of the Act of 1933 does not reproduce the provision in sect. 185 of the Act of 1875 directing copies of confirmed bye-laws to be hung up in the office of the council, and if this course has been adopted, it may be dispensed with after June 1, 1934, as regards all bye-laws to which sect. 185 applied. [723]

There are two other provisions in respect of which sect. 250 of the L.G.A., 1933 (*e*), differs from the law previously in force. Clerks of county councils are required by sub-sect. (9) to send a copy of every bye-law, made after June 1, 1934, by their councils and confirmed, to the council of every non-county borough or district, situate wholly or in part within the county. Reciprocally the clerk of every such council is to

(*c*) See Circular C1a issued by M. of H. (January, 1929) which should be consulted.

(*d*) Circular C7a (September, 1928).

(*e*) 26 Statutes 440.

(*f*) In June, 1927, the M. of H. issued a memorandum on the "Printing of bye-laws," for the text of which see Lumley's Public Health, 10th ed., p. 3085.

(*g*) 13 Statutes 706.

(*h*) 18 Statutes 1005.

send to the county council a copy of every such confirmed bye-law made by his council (*ibid.*). Similarly the clerk of a R.D.C. is to send a copy of every bye-law made after June 1, 1934, and confirmed, to the clerk of the parish council of every parish to which the bye-laws apply, or if the parish has not a separate parish council to the chairman of the parish meeting of the parish (sub-sect. (8)). The copy so sent is to be deposited with the public documents of the parish. [724]

Any person who destroys, tampers with, pulls down, injures or defaces any board on or to which any bye-law is inscribed or affixed is liable, on summary conviction, to a fine not exceeding £5 (*i*). [725]

Bye-laws made but not Confirmed before June, 1934.—Where a bye-law made before June 1, 1934, is not in force on that day by reason of its not having been confirmed, or of the time for its disallowance not having expired, proviso (ii.) to sect. 307 (1) of the L.G.A., 1933 (*j*), allows the same proceedings to be taken and with the same effect as if that Act had not been passed. The confirmation and prior proceedings will therefore continue under the repealed enactments. [726]

The P.H. (Confirmation of Bye-laws) Act, 1884 (*k*).—This Act, which also deals with the confirmation of bye-laws, is not repealed by the L.G.A., 1933.

Sect. 128 of the Towns Improvement Clauses Act, 1847 (*l*), sects. 68 and 69 of the Town Police Clauses Act, 1847 (*m*), and sect. 42 of the Markets and Fairs Clauses Act, 1847 (*n*), were all incorporated with the P.H.A., 1875, and all these sections authorised bye-laws for various purposes, such as the regulation of slaughter-houses, hackney carriages and markets. Although sect. 184 of the Act of 1875 (*o*) required bye-laws made under that Act to be confirmed by the Local Government Board (now the M. of H.), sect. 202 of the Towns Improvement Clauses Act, 1847 (*p*), required bye-laws made under that Act or the special Act to be confirmed by a judge of one of the superior courts or by quarter sessions, if no manner of confirmation was prescribed by the special Act. The decision in the case of *Wallasey Tramway Co. v. Wallasey Local Board* (*q*) suggested that this course should be followed, notwithstanding sect. 184 of the P.H.A., 1875.

Sect. 3 of the Act of 1884 provides that every bye-law made under any of the incorporated enactments above-mentioned, by reason of their incorporation with the P.H.A., 1848, the L.G.A., 1858 (*r*), the P.H.A., 1875, or any local Act or provisional order, or an Act confirming a provisional order, and every rule and regulation made or to be made by the council of a borough or urban district under sect. 48 of the Tramways Act, 1870 (*s*), should be deemed to require the confirmation of the confirming authority, and not to require any other confirmation, allowance or approval. The "confirming authority" was defined in sect. 2 of the Act as meaning the Secretary of State as regards bye-laws, etc., confirmed prior to August 19, 1871, or made under any of the incorporated enactments by reason of their incorporation with a local Act and confirmed prior to August 10, 1872; and as

(*i*) L.G.A., 1933, s. 289; 26 Statutes 458.

(*k*) 13 Statutes 801.

(*m*) 19 Statutes 53; 13 Statutes 604.

(*o*) 13 Statutes 705.

(*q*) (1883), 47 J. P. Jo. 821; 42 Digest 859, 117.

(*r*) 11 & 12 Vict. c. 63; 21 & 22 Vict. c. 98. Both these Acts were repealed by the P.H.A., 1875, with the exceptions specified in Sched. V., Part III. of the 1875 Act.

(*j*) *Ibid.*, 469.

(*l*) *Ibid.*, 573.

(*n*) 11 Statutes 464.

(*p*) *Ibid.*, 594.

(*s*) 20 Statutes 27.

regards other bye-laws, etc., the Local Government Board (now the M. of H.). [727]

CHARACTERISTICS OF BYE-LAWS

A bye-law must possess certain attributes, it must be : (1) reasonable ; (2) *intra vires* of the authority by whom it is made ; (3) not repugnant to the general law ; and (4) certain in its terms, positive and free from ambiguity. [728]

(1) **Reasonableness.**—A bye-law must be reasonable (*t*). A bye-law is not unreasonable merely because particular judges may consider that it goes further than is prudent, necessary or convenient, or because it is not accompanied by a qualification or an exception which some judges may consider ought to be there (*u*), or merely because its enforcement may result in inconvenient consequences or damage (*v*), or a destruction of property or rights (*w*). Thus a bye-law prohibiting motor cars from using a public park, made under a local Act which authorised bye-laws for regulating or preventing the admission of horses and vehicles to the park, was held to be reasonable (*x*), although it cancelled a right of way previously granted by the council. [729]

A bye-law prohibiting the embarking or disembarking of passengers at a quay so long as the local authority maintained a pier and charged not more than a certain sum for its use by the public is not unreasonable and does not impose a toll on the public (*y*). [730]

A bye-law would probably be held unreasonable if it was found to be partial and unequal in its operation as between different classes, if it was manifestly unjust, if it disclosed bad faith, or if it involved such oppressive or gratuitous interference with the rights of persons as could find no justification in the minds of reasonable men (*a*). [731]

Bye-laws made by public representative bodies authorised by Parliament to make bye-laws subject to safeguards prescribed by an Act should be benevolently interpreted and supported if possible, but those made by corpsns., such as railway and other companies carrying on business for profit, and only incidentally for the advantage of the public, should be jealously watched lest they work to the public disadvantage (*b*). [732]

A bye-law for good rule and government made by a county council which prohibited any person from playing music or singing within fifty yards of any dwelling after being requested by a constable or inmate to desist was held not unreasonable although it was not confined to acts causing an annoyance or nuisance. The case (*c*) was heard by a Divisional Court of seven judges, and the above distinction between

(*t*) *Ekwood v. Bullock* (1844), 6 Q. B. 383 ; 13 Digest 328, 645 ; *Stiles v. Galinski*, [1904] 1 K. B. 615 ; 38 Digest 164, 100 ; *Arkidge v. Islington Corpn.*, [1909] 2 K. B. 127 ; 38 Digest 164, 101.

(*u*) *Kruse v. Johnson*, [1898] 2 Q. B. 91, *per* Lord RUSSELL, C.J., at p. 100 ; 13 Digest 326, 631 ; as explained in *White v. Morley*, [1899] 2 Q. B. 34, *per* CHANNELL, J., at p. 39 ; 13 Digest 328, 652. See the judgments in these cases for the considerations to be applied.

(*v*) *Simmons v. Mallings R.D.C.*, [1897] 2 Q. B. 433—438 ; 38 Digest 229, 597.

(*w*) *Slattery v. Naylor* (1888), 13 App. Cas. 446, P. C. ; 13 Digest 327, 632.

(*x*) *A.-G. v. Hodgson*, [1922] 2 Ch. 429 ; 36 Digest 250, 30.

(*y*) *Everton v. Walker* (1927), 91 J. P. 125 ; 44 Digest 101, 805.

(*a*) *Kruse v. Johnson* (1898), *supra*, *per* Lord RUSSELL OF KILLOWEN, C.J., at p. 99 ; 13 Digest 326, 631.

(*b*) *Ibid.*, but see *contra*, *per* MATHEW, J., at p. 109.

(*c*) *Kruse v. Johnson* (1898), *supra*.

bye-laws made by trading companies and those made by local authorities was drawn. In a later case (*d*), it was explained that "where a thing is of such character as that it can be a nuisance, it is to rest with the local authority to say whether it shall be considered to be a nuisance in the particular locality for which they have power to make bye-laws. The court can say whether it is reasonably possible for the prohibited act or thing to be a nuisance; but they cannot say whether it should or should not be forbidden in any particular locality." [733]

A bye-law under a local Act prohibiting the use of steam and other mechanical musical instruments in a borough was upheld, although it did not exempt small mechanical instruments in private houses (*e*). [734]

Lawful preferential treatment is an exception and is a question of degree (*f*), but in special circumstances some preferential treatment may be accorded, as for instance in favour of clubs who make and keep up recreation grounds (*g*). [735]

A bye-law in restraint of trade is bad unless there is a custom to support it (*h*). But notwithstanding any custom or bye-law every person in a borough may keep any shop for the sale of all lawful wares and merchandises by wholesale or retail, and use every lawful trade for hire and gain, sale or otherwise within a borough (*i*). This enactment, however, does not prevent the making of bye-laws regulating trades under sect. 23 of the Act (*k*). [736]

A bye-law which in effect prohibited the bringing into a market, without permission, of articles for which the market had been established was held invalid as in general restraint of trade (*l*). Without an express power to prohibit conferred by the statute, a power of regulating a trade does not authorise a bye-law making it unlawful to carry on a lawful trade in a manner otherwise lawful (*m*). [737]

A bye-law for regulating trade although it involves a partial restraint may not be unreasonable (*n*). [738]

Where there is an express power by bye-laws to prohibit or regulate the erection of booths on the seashore, the reservation by bye-law of a power to grant permissions for such erections may be upheld (*o*). [739]

A stringent bye-law is not necessarily unreasonable because no discretion is reserved to the authority in exceptional cases, looking to the discretion of justices under the Probation of Offenders Act, 1907 (*p*). [740]

In order to avoid a bye law upon the ground of its being unreasonable, because of some inconvenience that may result from it, it should

(*d*) *White v. Morley*, [1899] 2 Q. B. 34, *per* CHANNELL, J., at p. 39; 13 Digest 328, 652.

(*e*) *Southend-on-Sea Corpn. v. Davis* (1900), 16 T. L. R. 167; 38 Digest 159, 68.

(*f*) *Mitcham Common Conservators v. Cox*; *Same v. Cole*, [1911] 2 K. B. 854, *per* PHILLIMORE and HAMILTON, JJ., at p. 875; 11 Digest 88, 1073.

(*g*) *Ibid*.

(*h*) *Hesketh v. Braddock*, (1766), 3 Burr. 1847; 13 Digest 331, 639. See also *Fazakerley v. Wiltshire* (1721), 1 Stra. 462; 38 Digest 157, 53.

(*i*) Municipal Corpn. Act, 1882, s. 247; 10 Statutes 655.

(*k*) 10 Statutes 584 (replaced by L.G.A., 1933, s. 249; 26 Statutes 439).

(*l*) *Wortley v. Nottingham Local Board* (1869), 21 L. T. 582; 33 Digest 532, 93.

(*m*) *Toronto Corpn. v. Virgo*, [1896] A. C. 88, P. C.; 33 Digest 567, 528.

(*n*) *Freemantle v. Silk Throwsters' Co.* (1668), 1 Lev. 229; 13 Digest 332, 704.

(*o*) *Williams v. Weston-super-Mare U.D.C.* (1907), 72 J. P. 54; 38 Digest 160, 75;

Williams v. Weston-super-Mare U.D.C. (No. 2) (1910), 74 J. P. 370; 38 Digest 160, 76.

(*p*) 11 Statutes 365. See also *Salt v. Scott Hall*, [1903] 2 K. B. 245; 38 Digest 196, 327 (breach of building bye-laws).

appear that the inconvenience is a probable one; for one can hardly predicate of any law that some possible inconvenience may not result from it; but is it likely to happen? Though the long continuance of a bye-law would not legalise it if it were in itself illegal, its operation for many years is fair evidence of the absence of any intrinsic inconvenience in the bye-law (g). [741]

(2) **Intra vires of the Authority by Whom Made.**—In testing the validity of a bye-law regard must be had to the intention of the enactment by which the bye-law was authorised (r).

By sect. 57 of 7 & 8 Geo. 4, c. lxxv. (now repealed), power was given to the court of the mayor and aldermen of the City of London to make such rules and bye-laws as they should think proper for the government and regulation of the freemen of the Company of Watermen and Lightermen and the boats, vessels, etc., rowed or worked within the limits of the Act, provided that the rules and bye-laws were not inconsistent with any of the laws of the kingdom or the provisions and directions contained in the Act. A bye-law was made which imposed a penalty upon any freeman of the company who should set at work to row or in any manner navigate, any lighter, barge, etc., within the limits, any other person not being a freeman of the company, etc. It was held that although there was no section of the Act which went to the extent of the bye-law in prohibiting the employment of non-freemen in rowing and navigating barges, still the bye-law was a good bye-law under the powers conferred by sect. 57, there being nothing in its prohibition inconsistent with law or the provisions and directions of the Act (s). [742]

The Municipalities Act, 1868, authorised borough councils in New South Wales to make bye-laws regulating the interment of the dead. A borough council made a bye-law in 1884 forbidding burials "in any existing cemetery now open for burials within a distance of 100 yards from any public building, place of worship, school room, dwelling-house, public pathway, street, road or place within the borough." There was a cemetery within the borough which had been used since 1862, no part of which was more than 100 yards distant from a place of worship, etc., as mentioned in the bye-law. It was decided that the bye-law could not be held to be *ultra vires* because it had the effect of closing the particular cemetery and depriving the appellant of burial rights which he had purchased in 1879 (t). [743]

A local authority made bye-laws for the regulation of a pleasure ground under sect. 164 of the P.H.A., 1875 (u), including a bye-law prohibiting any person from suffering any fowl belonging to him to enter or remain in the pleasure ground. Six fowls belonging to B. strayed inside, there being no fence sufficient to prevent them. It was decided that the justices were right in declining to convict as the bye-law was repugnant to the law of England and was not warranted by the section (a). [744]

(g) See *R. v. Ashwell* (1810), 12 East, 22; 13 Digest 338, 770. The bye-law was stated by Lord ELLENBOROUGH, C.J., to have been made in 1577.

(r) *Smith v. Gl. Yarmouth Port Commissioners* (1919), 88 L. J. K. B. 1190; 41 Digest 960, 8542; *Parker v. Bournemouth Corpn.* (1902), 86 L. T. 449; 38 Digest 165, 107.

(s) *Edmonds v. Watermen and Lightermen Co.* (1855), 24 L. J. M. C. 124; 13 Digest 329, 664.

(t) *Slattery v. Naylor* (1888), 13 App. Cas. 446; 7 Digest 549, 277.

(u) 13 Statutes 693.

(a) *Torquay Local Board v. Bridle* (1882), 47 J. P. 183; 38 Digest 162, 82.

A bye-law made under sect. 23 of the Municipal Corpn. Act, 1882 (*b*), against sounding or playing upon any musical instrument in a street in the borough on Sunday is *ultra vires* (*c*), and likewise against singing, reciting or preaching without a licence (*d*), but a bye-law under this section regulating shooting galleries and roundabouts is *intra vires* (*e*), notwithstanding the specific power to make bye-laws for the prevention of danger from them under sect. 38 of the P.H.A. Amendment Act, 1890 (*f*), when in force by adoption.

A bye-law under sect. 23 of the Municipal Corpn. Act, 1882, against the deposit of litter in streets is *intra vires* (*g*). [745]

(3) **Repugnancy to the General Law.**—All bye-laws which are contrary to the laws or statutes of the Realm are void and of no effect (*h*). Nevertheless “a bye-law must necessarily superadd something to the common law otherwise it would be idle” (*i*). [746]

A bye-law is not repugnant to the general law merely because it creates a new offence and says that something shall be unlawful which the law does not say is unlawful. It is repugnant if it makes unlawful that which the general law says is lawful, if it expressly or by necessary implication professes to alter the general law of the land, or if it adds something inconsistent with the general provisions of a statute dealing with the same subject-matter, but if it adds something which is not inconsistent, that is not sufficient to make the bye-law bad as repugnant (*k*).

Thus a bye-law under sect. 157 of the P.H.A., 1875 (*l*), as to new streets, requiring a channel to be constructed of granite cubes on a bed of concrete was held not to be repugnant to sect. 150 of that Act, or the Private Street Works Act, 1892 (*m*). [747]

Where a railway company made under the Railways Clauses Consolidation Act, 1845, sects. 108 and 109 (*n*), a bye-law that any passenger travelling without a ticket must pay the whole fare between the station whence the train originally started and the end of his journey, it was decided that: (1) the railway company were not entitled to recover as a debt the excess fare claimed as the Act gave them no power to create such a debt: (2) the bye-law was repugnant to the provisions of the Act because the Act only authorised the exaction of an additional sum from a passenger whose conduct had been fraudulent (*o*). [748]

Following a dispute in an election of common conservators under a local Act of 1871, it was decided that nothing done by the conservators could diminish an elector's right under the Act to vote as a tenant or occupier unless a power to do so was conferred by an Act or authority

(b) 10 Statutes 584.

(c) *Johnson v. Croydon Corpn.* (1886), 16 Q. B. D. 708; 38 Digest 159, 63.

(d) *Munro v. Watson* (1887), 57 L. T. 366; 38 Digest 159, 65.

(e) *Teale v. Harris* (1896), 60 J. P. 744; 38 Digest 159, 67.

(f) 13 Statutes 839.

(g) *Batchelor v. Sturley* (1905), 93 L. T. 539; 38 Digest 161, 78.

(h) *London's Chamberlain Case* (1590), 5 Co. Rep. 62 b, 63 a; 38 Digest 162, 81; *Leathley v. Webster* (1755), Say. 251; 13 Digest 329, 654.

(i) *R. v. Saddlers' Co.* (1861), 3 E. & E. 72 (Ex. Ch.), per MARTIN, B., at p. 80; 38 Digest 163, 85.

(k) *Gentel v. Rapps*, [1902] 1 K. B. 160, per CHANNELL, J., at p. 166; 13 Digest 328, 653; *White v. Morley*, [1899] 2 Q. B. 34; 13 Digest 328, 652.

(l) 13 Statutes 689.

(m) 9 Statutes 193; *Leyton U.D.C. v. Chew*, [1907] 2 K. B. 283; 26 Digest 555, 2505.

(n) 14 Statutes 71.

(o) *London and Brighton Rail. Co. v. Watson* (1879), 4 C. P. D. 118; 8 Digest 111, 749; *Dearden v. Townsend* (1865), L. R. 1 Q. B. 10; 8 Digest 111, 748.

equal to that of the Act of 1871, and if a bye-law (purporting to be made under that Act) had effect as so diminishing an elector's rights, it would be void and must be disregarded (*p*). [749]

A bye-law which creates a monopoly of trade or profit in favour of one company or person and excludes all others is contrary to law (*q*). [750]

Where a navigation company were empowered by a local Act to make bye-laws for good and orderly navigation and the well-governing of bargemen and watermen carrying goods on any part of the navigation, this power did not authorise the company by bye-law to prevent the public using the river on Sundays except for the purpose of travelling to and from divine worship. The bye-laws authorised by the Act do not allow the company to regulate moral or religious conduct which are left to the laws of God and of the land (*r*). [751]

(4) **Certainty of Terms.**—A bye-law must be certain in its terms; it must contain adequate information as to the duties of those who are to obey it (*s*).

A bye-law made by a borough council for good rule and government providing that "no person shall wilfully annoy passengers in the streets" was held void for uncertainty (*t*).

By a bye-law made by a county council for good rule and government under sect. 16 of the L.G.A., 1888 (*u*), any person who in any street or public place should make use of any profane, obscene or indecent language to the annoyance of passengers was made liable to a penalty. *Held*, the bye-law did not apply to the use of alleged indecent language in a public house to persons present therein (*a*). [752]

A bye-law for good rule and government made by a county council prohibiting persons frequenting a street or public place "for the purpose of selling or distributing any paper or written or printed matter devoted wholly or mainly to giving information as to the probable results of steeplechases, races or other competitions" was held to be void for uncertainty, as including cases where the sale of the paper was not in aid of betting (*b*). [753]

The persons upon whom the duty of compliance with bye-laws is imposed should be clearly indicated in the bye-laws, and this is specially necessary where the duty is to do rather than to forbear from doing; certain and definite language is necessary, vague conditions which require an approval of an official are to be deprecated and do not fulfil the purpose aimed at by statute (*c*). [754]

(5) **Ambiguity.**—If a bye-law is capable of two constructions one of which would make it invalid and the other good, the latter construction will prevail (*d*). [755]

(*p*) *Purves v. Wimbledon and Putney Commons Conservators* (1890), 62 L. T. 529; 38 Digest 162, 83.

(*q*) *Davenant v. Hurd* (1598), Moore, K. B. 576; 13 Digest 329, 655.

(*r*) *Calder and Hebble Navigation Co. v. Pilling* (1845), 14 M. & W. 76; 38 Digest 413, 1023.

(*s*) *Kruse v. Johnson*, [1898] 2 Q. B. 91, *per* MATHEW, J., at p. 108; 13 Digest 326, 631; *Nash v. Finlay* (1901), 85 L. T. 682; 38 Digest 163, 89.

(*t*) *Nash v. Finlay*, *supra*.

(*u*) 10 Statutes 698.

(*a*) *Russon v. Dutton* (No. 1) (1911), 104 L. T. 601; 38 Digest 166, 114.

(*b*) *Scott v. Pilliner*, [1904] 2 K. B. 855; 25 Digest 436, 333.

(*c*) Circular letter of Local Government Board to Urban Authorities, July 25, 1877.

(*d*) *Collman v. Mills*, [1897] 1 Q. B. 396, *per* WILLS, J., at p. 399; 14 Digest 44, 128.

A bye-law for good rule and government made by a county council ought to be construed to give reasonable effect to the object aimed at (e). [756]

A bye-law which is void in part is altogether void (f), unless the void part can be severed from that which is good and the latter can be enforced independently (g). [757]

A power to make bye-laws for the regulation of trade may be given by statute, but such a power does not confer or imply power to prohibit or prevent trade; for the latter power can only be given by express words (h). But bye-laws operating in partial restraint of trade may be supported if they are reasonable (i). [758]

ABROGATION OR WAIVER OF BYE-LAWS

Bye-laws as such cannot be waived by a local authority because they are made under statute (k), but where a discretionary power is conferred by the bye-laws, it may be exercised. The presence of a discretionary clause does not render valid a bye-law which is for some reason invalid (l).

When a bye-law is made under an Act of Parliament, the repeal of the enabling Act abrogates the bye-law unless the bye-law is preserved by a saving in the repealing Act (m).

In *Salt v. Scott Hall* (n), Channell, J., expressed an opinion that all bye-laws as to buildings ought to have in them something giving some one power to say that their hard and fast rules should not apply to particular cases. The Local Government Board, however, stated that, in their opinion, bye-laws which are enforceable by penalties should be framed in such a way as to prescribe definite requirements as far as practicable for every particular state of circumstances to which the bye-laws are intended to apply (o). They considered that the observations of the court in the above case were met by the Probation of Offenders Act, 1907, sect. 1 (p), which empowers the justices upon the committing of a trivial offence or one under extenuating circumstances to dismiss the information or accept recognizances from the accused. The matter was considered at length by the Departmental Committee on Building Bye-laws (q). The Housing Act, 1925, sect. 99 (r), authorises the M. of H. to relax building bye-laws in connection with housing operations under the Housing Act, 1930, and gives a right to private individuals thereafter to depart from the same bye-laws to the same extent, and sect. 101 of the 1925 Act, empowers the Minister to revoke bye-laws which he is satisfied are, or are likely to be, an unreasonable impediment to building. [759]

(e) *Walker v. Stretton* (1896), 60 J. P. 313; 38 Digest 166, 112.

(f) Com. Dig. tit. Bye-law C. 7; *Elwood v. Bullock* (1844), 6 Q. B. 383; 13 Digest 328, 645.

(g) *R. v. Lundie* (1862), 31 L. J. M. C. 157; 13 Digest 333, 716; *Strickland v. Hayes*, [1896] 1 Q. B. 290; 38 Digest 164, 97.

(h) *Toronto Corp'n. v. Virgo*, [1896] A. C. 88; 33 Digest 567, 528.

(i) *Gray v. Sylvester* (1897), 61 J. P. 807; 38 Digest 165, 105; *Scott v. Glasgow Corp'n.*, [1899] A. C. 470; 33 Digest 538, 146.

(k) *Baxter v. Bedford Corp'n.* (1885), 1 T. L. R. 424; 38 Digest 166, 119; *Yabbicom v. King*, [1899] 1 Q. B. 444; 38 Digest 190, 286.

(l) *Waite v. Garston Local Board* (1867), L. R. 3 Q. B. 5; 38 Digest 195, 315.

(m) *Watson v. Winch*, [1916] 1 K. B. 688; 13 Digest 338, 772.

(n) [1903] 2 K. B. 245; 38 Digest 196, 327.

(o) Local Government Board circular letter, July 25, 1877.

(p) 11 Statutes 365.

(q) Cmd. 9213 of 1928.

(r) 13 Statutes 1057; as amended by the Fifth Schedule to the Housing Act, 1930; 23 Statutes 442.

Apart from the reservation of a discretionary power (*s*) by bye-law, a local authority cannot waive the requirements of their bye-laws (*t*) nor can they barter away a compliance with bye-laws. A firm of builders had, as an enterprise of their own, built a number of houses within the defendant's district, but had not complied with the bye-laws as to drainage. The council appointed a sub-committee to settle all outstanding matters, and it was agreed that the drainage scheme should remain, although contrary to the bye-laws. The council then repudiated the agreement arrived at with the sub-committee, and it was held that as it had not been established that the houses formed part of a housing scheme to which sect. 99 of the Housing Act, 1925, applied, the verbal contract made by the sub-committee was not binding on the council, because no power to enter into such a contract could be conferred upon the sub-committee. Neither had the M. of H. power under sect. 99 to relax bye-laws in favour of a private building scheme (*u*). [760]

CONSTRUCTION OF BYE-LAWS

Broad rules for the construction of statutes have been laid down from early times. It has been said that their meaning is primarily to be sought in themselves (*a*), by which it is to be understood that all the constituent parts so far as they may be regarded as matter which has received the sanction of Parliament are to be duly weighed. It has been further said that their grammatical and ordinary sense is mainly to be regarded (*b*). If the collocation of enacting words is in itself precise and unambiguous, no difficulty arises (*c*), but if the terms employed are ambiguous, then the intention of Parliament must be sought first in the statute itself (*d*), then in other legislation and contemporaneous circumstances (*e*), and finally in the general rules laid down by Sir E. Coke (*f*) and often since approved (*g*), namely by ascertaining: (1) what was the common law before the Act; and (2) what was the mischief and effect for which the common law did not provide (*h*). [761]

Statutory rules, orders and bye-laws differ from statutes in that it may be open to the judiciary to question their validity, to examine if

(*s*) NOTE.—The Minister of Health does not approve bye-laws which contain a discretionary power either to the authority or its officers.

(*t*) *Baxter v. Bedford Corpn.* (1885), 1 T. L. R. 424; 38 Digest 166, 119; *R. v. Newcastle-upon-Tyne Corpn.* (1889), 60 L. T. 963; 38 Digest 191, 294; *Re McIntosh and Pontypridd Improvements Co.* (1891), 61 L. J. Q. B. 164; 38 Digest 166, 120; *Yabbicom v. King*, [1899] 1 Q. B. 444; 38 Digest 190, 286.

(*u*) *Bean (William) & Sons, Ltd. v. Flaxton R.D.C.*, [1929] 1 K. B. 450; Digest Supp.

(*a*) *Ex visciribus actus* (Co. Litt. 3816), and see *Lincoln College's Case* (1595), 3 Co. Rep. 58b, 59d; 42 Digest 645, 505.

(*b*) *Copeman v. Gallant* (1716), 1 P. Wms. 314, 320; 42 Digest 652, 601; *Warburton v. Loveland d. Ivie* (1828), 1 Hud. & B. 628, 628; 17 Digest 264, *t*.

(*c*) *Sussex Peerage Case* (1844), 11 Cl. & Fin. 85, per TINDALL, C.J., at p. 143; 42 Digest 650, 569.

(*d*) See 27 Halsbury, p. 136.

(*e*) *Ibid.*, p. 138.

(*f*) *Heydon's Case* (1584), 3 Co. Rep. 7 a, 7 b; 42 Digest 614, 143.

(*g*) *Salkeld v. Johnson* (1848), 2 Exch. 256, per POLLOCK, C.B., at p. 273; 42 Digest 611, 119; *Wear River Commissioners v. Adamson* (1877), 2 App. Cas. 743, per Lord BLACKBURN, at p. 764; 42 Digest 610, 105.

(*h*) See 4 Co. Inst. 324; *Willion v. Berkley* (1561), 1 Plowd. 227, 231; 42 Digest 635, 377; *Stowel v. Zouch (Lord)* (1569), 1 Plowd. 353, 366 (Ex. Ch.); 42 Digest 635, 378, and other cases named in 27 Halsbury, p. 132.

they have complied with conditions precedent (*i*), and in the case of bye-laws to consider if they are reasonable, as to which there may be great diversity of opinion (*h*). If they fail to comply with such conditions, the court may quash them or treat them as unenforceable (*l*).

[762]

Statutes of a subordinate legislature and also rules, ordinances, orders and bye-laws which have fulfilled all the conditions precedent to their validity have the force of statutes and must be construed as such (*m*). [763]

Bye-laws made by a local authority should be benevolently interpreted (*n*).

A bye-law made under a local Act forbade any one to allow any awning to project over or upon any public footway, or to hang out goods for sale or exhibition so as to project over the public footway or obstruct passengers . . . or to hang out any cloth or cause or commit any other obstruction, nuisance or annoyance in any street or public place. The defendant, the owner of a private house converted the ground floor into a shop and extended it over the forecourt to the public way, and the plinth extended 1½ inches over the footway. *Held*, the specific offences enumerated in the bye-law were of a temporary character; that the general words at the end of the bye-law must be restricted to matters *ejusdem generis* with the offences specifically enumerated; and that as the defendant had made an obstruction of a permanent character the conviction was wrong (*o*).

A bye-law provided that every person who should erect a new building should cause every pipe in the building for carrying off waste water from every lavatory or sink to a sewer to be constructed of lead or iron or stoneware, and to be trapped immediately beneath such lavatory or sink by an efficient syphon trap which should be ventilated into the external air wherever such ventilation should be necessary to preserve the seal of such trap. The appellants had constructed rows of basins in a new school for the London School Board; the waste water from each basin ran through a pipe into an open drain which was trapped before it reached the sewer. It was held that each basin was not a lavatory and that the case was not within the bye-law (*p*).

If a bye-law in terms conflicts with the Act under which it is made the bye-law should, if it can, be reconciled with the Act, but if it cannot it must give way to the Act (*q*). [764]

Under sect. 31 of the Interpretation Act, 1889 (*r*), expressions used in bye-laws have, unless the contrary intention appears, the same meanings as in the Act conferring the power to make the bye-laws, thus giving statutory effect to a principle laid down at an earlier date (*s*). [765]

(*i*) *Drew v. Harlow* (1875), 39 J. P. Jo. 420; 22 Digest 315, 3079; *Timothy v. Penn* (1910), 74 J. P. 123; 22 Digest 315, 3080.

(*h*) *Kruse v. Johnson*, [1898] 2 Q. B. 91, 100; 13 Digest 326, 631.

(*l*) *Dodwell v. Oxford University* (1680), 2 Vent. 33; 13 Digest 326, 613.

(*m*) *Timothy v. Penn* (1910), *supra*; *Drew v. Harlow* (1875), *supra*.

(*n*) *Kruse v. Johnson* (1898), *supra*.

(*o*) *R. v. Dickenson* (1857), 7 E. & B. 831; 38 Digest 165, 110.

(*p*) *Treasure & Co. v. Bermondsey Borough Council* (1904), 68 J. P. 206; 38 Digest 187, 253.

(*q*) *Re Davis, Ex parte Davis* (1872), 7 Ch. App. 526; 42 Digest 783, 2132; *Irving v. Askew* (1870), L. R. 5 Q. B. 208; 13 Digest 506, 567.

(*r*) 18 Statutes 1003.

(*s*) *Blashill v. Chambers* (1884), 14 Q. B. D. 479, *per* GROVE, J., at p. 485; 38 Digest 166, 111.

PENALTIES FOR BREACH

Imposition.—Sect. 183 of the P.H.A., 1875 (*t*), allows a borough or district council, by bye-laws made by them under the Act, to impose on offenders against the same such reasonable penalties as they think fit, not exceeding the sum of £5 for each offence, and in the case of a continuing offence a further penalty not exceeding 40s. for each day after written notice of the offence from the local authority. The same section provides that nothing in any Act incorporated with the Act of 1875 is to authorise the imposition or recovery under any bye-law made in pursuance of such provisions of any greater penalty than the penalties above specified. [766]

Sect. 183 also contained a direction that all bye-laws should be so framed as to allow of the recovery of any sum less than the full amount of the penalty imposed by the bye-laws. This part of the section is repealed by the L.G.A., 1933 (*u*), as unnecessary in view of the present powers of justices to reduce a penalty under the Summary Jurisdiction Acts. [767]

Sect. 251 of the L.G.A., 1933 (*v*), reproduces with some amendments, in relation to future bye-laws to which sect. 250 applies, the main provisions of sect. 183 of the P.H.A., 1875. Thus sect. 251 refers to fines instead of penalties, and it is made clear that any fine is to be recoverable on summary conviction and the daily penalty of 40s. runs for each day during which the offence continues after a conviction, instead of for each day during which it continues after written notice of the offence from the council. Apparently sect. 183 of the Act of 1875, not sect. 251 of the Act of 1933, extends to bye-laws in force on June 1, 1934. These are saved by proviso (*i.*) to sect. 307 (1) of the Act (*w*), which directs that nothing in the repeals made shall affect any bye-law in force on that day. Moreover, the recovery of penalties under existing bye-laws will in general be made under sect. 6 of the P.H.A. Amendment Act, 1907 (*a*), and no part of this provision is repealed by the Act of 1933. [768]

Evidence of Bye-laws.—As regards the production of bye-laws in evidence, sect. 252 (*b*) of the L.G.A., 1933, is based on sect. 186 of the P.H.A., 1875 (*c*), but extends to bye-laws made by borough councils as well as county councils, district councils and parish councils, and sect. 24 of the Municipal Corpsns. Act, 1882 (*d*), is repealed as well as sect. 186 of the Act of 1875. Sect. 252 extends to all bye-laws made by any council already mentioned, whether before or after June 1, 1934. The section contemplates that the town clerk or clerk of the council should endorse on a printed copy of the bye-laws a certificate signed by him stating that the bye-laws were made by the council, that the copy is a true copy, that on a specified date they were either confirmed by the authority named or sent to the Secretary of State, and have not been disallowed, and the date, if any, fixed by the confirming authority for their coming into operation. A certificate in this form is constituted by the section *prima facie* evidence of the facts stated in it, and without proof of the handwriting or official position of any person purporting to sign the certificate. [769]

t) 13 Statutes 705.

v) *Ibid.*, 442.

a) 13 Statutes 913. See *post*, p. 373.

c) 13 Statutes 706.

u) 26 Statutes 516.

w) *Ibid.*, 469.

b) 26 Statutes 443.

d) 10 Statutes 585.

Recovery of Penalty.—By sect. 251 of the P.H.A., 1875 (*e*), all offences under that Act and all penalties, forfeitures, costs and expenses under the Act directed to be recovered in a summary manner or the recovery of which is not otherwise provided for, may be prosecuted and recovered in manner directed by the Summary Jurisdiction Acts (*f*) before a court of summary jurisdiction. [770]

Some doubt existed whether this provision covered offences against bye-laws, but sect. 6 of the P.H.A. Amendment Act, 1907 (*g*), directs that offences under any bye-laws made under the powers of that Act, or under the powers of the P.H.A., 1875, or any enactment amending or extending that Act, may be prosecuted, and penalties recovered, in like manner and subject to the same provisions as offences which may be prosecuted and penalties which may be recovered, in a summary manner under the P.H.A., thus applying sect. 251 and other provisions of the P.H.A., 1875.

By sect. 253 of the P.H.A., 1875 (*h*), proceedings for the recovery of a penalty under the Act cannot, except as in the Act expressly provided, be had or taken by any person other than a party aggrieved, or the local authority of the borough or district in which the offence is committed, without the consent of the Attorney-General. Several decisions have been given on the point whether on the facts a person was or was not "a party aggrieved" (*i*).

Where summary proceedings are taken for the breach of a bye-law, the proceedings must be taken within the limit of six months from the date of the offence imposed by sect. 11 of the Summary Jurisdiction Act, 1848 (*k*). [771]

Where the application of a penalty under the Act of 1875 is not otherwise provided for, one half goes to the informer, and the remainder to the council of the borough or district in which the offence was committed, but if the council be the informer they are entitled to the whole of the penalty recovered (*l*). Court fees and police fees are, however, made a first charge on fines by sect. 5 of the Criminal Justice Administration Act, 1914 (*m*). [772]

The amending P.H.A. (*n*) are generally to be construed together with the P.H.A., 1875, as one Act, and all powers given to a local authority by the Act of 1875 are deemed to be in addition to and not in derogation of any other powers conferred upon the authority by statute, law or custom, but no person who has been adjudged to pay a penalty under the Act of 1875 is liable for the same offence to a penalty under any other Act (*o*). [773]

Injunction.—Where the breach of a bye-law constitutes a continuing interference with the rights of the public, it may be restrained by injunction, but the Attorney-General is a necessary party (*p*), and

(*e*) 13 Statutes 730.

(*f*) Summary Jurisdiction Act, 1848, s. 19; 11 Statutes 283, and see note thereto.

(*g*) 13 Statutes 913.

(*h*) *Ibid.*, 731.

(*i*) See pp. 558—560 of Lumley's Public Health, 10th ed.

(*k*) 11 Statutes 278.

(*l*) P.H.A., 1875, s. 254; 13 Statutes 731.

(*m*) 11 Statutes 373.

(*n*) See 13 Statutes 463 *et seq.*, and 25 Statutes 468.

(*o*) P.H.A., 1875, s. 341; 13 Statutes 764.

(*p*) *A.-G. v. Ashborne Recreation Ground Co.*, [1903] 1 Ch. 101; 28 Digest 367, 36; *Deonport Corpn. v. Tozer*, [1903] 1 Ch. 759; 26 Digest 558, 2523.

the jurisdiction to grant an injunction is not affected by the fact that the offender has already been convicted and fined for his offence (*q*).

[774]

Bye-laws may be enforced not only by the recovery of penalties from offenders, but also, in some instances, by the pulling down of offending work (*r*), the removal of offenders from the place to which the bye-laws relate, and the suspension or cancellation of registration or licences. This last power is, however, usually conferred expressly by statute. [775]

LONDON

General.—The general law relating to bye-laws as set out above is equally applicable to the central and local authorities within the administrative county of London, and is more particularly referred to under their respective titles.

Part XII. of the L.G.A., 1933 (*s*), does not apply to London, and the repealed sections and sect. 16 of the L.G.A., 1888, and sect. 23 of the Municipal Corpn. Act, 1882 (*t*), are still in force in London. The L.G.A., 1888, by sect. 16 (*u*) provides that a county council shall have the same power of making bye-laws in relation to their county or to any specified part or parts thereof as a council of a borough have of making bye-laws in relation to their borough under sect. 23 of the Municipal Corpn. Act, 1882, and sect. 187 of the P.H.A., 1875 (*a*), shall apply to such bye-laws. Sect. 23 of the Municipal Corpn. Act, 1882, enables the L.C.C. from time to time to make such bye-laws as to them seem meet for the good rule and government of the county, and for the prevention and suppression of nuisances not already punishable in a summary manner by virtue of any Act in force.

The L.C.C. have power to make bye-laws under the Education Acts; Housing Acts; Metropolitan Fire Brigade Act, 1865; Highways and Locomotives (Amendment) Act, 1878; the London Building Act, 1930; Metropolis Management Acts; Metropolitan Board of Works (Various Powers) Acts, 1877, 1882, 1885; Open Spaces Act, 1906; P.H. (London) Act, 1891; The Thames Tunnel Acts, 1887, 1897, 1900; Tramways Act, 1870; and a number of L.C.C. General Powers Acts; the L.C.C. (Subway) Act, 1893; London Overground Wires, etc., Act, 1933; and the Merchant Shipping Act, 1894. (These powers are summarised on pp. 376—378, *post*.)

Bye-laws have been made dealing with Advertisement Regulations, Bridges, Buildings, Sale of Coal, Common Lodging Houses, Conveyance of Dead Horses, Drainage and Sanitation, Electric Lighting, Employment Agencies, Employment of Children, Foot and Mouth Disease, Good Rule and Government, Massage Establishments, Nursing Homes, Overhead Wires, Offensive Businesses, Parks, Gardens and Open Spaces, Petroleum, School Attendance, Seamen's Lodging Houses, Shops, Slaughterhouses, Smoke Abatement, Subways, Tenement Houses, Theatres, Tramways, Tunnels and Woolwich Ferry. A printed collection of those in force at May, 1931, has been published (*7s. 6d.*). [776]

Metropolitan Borough Councils.—The London Government Act,

⁴². (*q*) *A.-G. v. Wimbledon House Estate Co., Ltd.*, [1904] 2 Ch. 34; 28 Digest 368.

(*r*) See BUILDING BYE-LAWS, *ante*, p. 298.

(*s*) 26 Statutes 439.

(*t*) 10 Statutes 584, 585.

(*u*) *Ibid.*, 698.

(*a*) 13 Statutes 706.

1899, by sect. 5 (2) (b) allowed Metropolitan Borough Councils, and sect. 14 of the City of London (Various Powers) Act, 1933 (bb), allowed the Corporation also to exercise certain powers and duties of the L.C.C., under enactments mentioned in Part II. of the Second Schedule to that Act, including power to make bye-laws under sect. 23 of the Municipal Corpns. Act, 1882, but such bye-laws are to be in force only within the borough and not to be inconsistent with any bye-laws made by the county council.

Sect. 64 (1) in Part IV. of the L.G.A., 1929 (c), empowers the Minister of Health if he thinks fit, on the application of the L.C.C. or of any association or committee which is in his opinion representative of the metropolitan borough councils, by order to provide for the transfer to all the metropolitan borough councils of any functions exercisable by the county council other than functions transferred to them under Part I. of the Act of 1929. Pursuant to a joint application made by the L.C.C. and the metropolitan boroughs standing joint committee to the Minister for the transfer of certain functions exercisable by the L.C.C., an Order was made entitled the Transfer of Powers (London) Order, 1933 (d), which provides *inter alia*, by the first schedule, for the transfer to the metropolitan borough councils and the common council of the City of London of the power of enforcing bye-laws made by the county council relating to seamen's lodging houses, made under the Merchant Shipping Act, 1894, sect. 214 (e), and, by the second Schedule to the order, for the transfer to the borough councils of the enforcement of bye-laws relating to common lodging houses made by the L.C.C. under the Common Lodging Houses Acts and certain L.C.C. (General Powers) Acts.

Metropolitan borough councils may make bye-laws relating to the business of meetings of the council and its committees, the appointment, removal, duties and remuneration of officers and servants under the Metropolis Management Act, 1855, sect. 202 (f), also bye-laws as sanitary authorities under the P.H. (London) Act, 1891 (g), for a variety of matters such as cleansing of cisterns, paving of yards, public conveniences, tents, sheds, and water supply for water closets. (These powers are summarised on p. 378, *post.*) [777]

Summary.—(1) *The L.C.C. may make Bye-laws or Regulations as follows :*

1. For regulating their business, officers, etc. : Metropolis Management Act, 1855, sect. 202.

2. For the good rule and government of the county or any specified part thereof : Municipal Corpns. Act, 1882, sect. 23 ; L.G.A., 1888, sect. 16.

3. For the guidance, direction and control of borough councils in the construction of sewers : Metropolis Management Acts, 1855, sect. 138 ; 1862, sect. 83.

4. For regulating construction, cleansing and repairing of all pipes and drains communicating with sewers : Metropolis Management Act, 1855, sect. 202.

5. For regulating use of subways, and fixing scale of fees and charges : Metropolis Subways Act, 1868, sect. 10 ; L.C.C. (Subway) Act, 1893.

(b) 11 Statutes 1227.

(c) 10 Statutes 927.

(e) 18 Statutes 238.

(g) *Ibid.*, 1025.

(bb) 26 Statutes 594.

(d) S.R. & O., 1933, No. 114.

(f) 11 Statutes 934.

6. For regulating traffic on highways : Highways and Locomotives Act, 1878, sect. 26.

7. For regulating common lodging houses : L.C.C. (General) Powers Act, 1902, sect. 53.

8. For regulating the rate of speed, etc., of tramcars : Tramways Act, 1870, sect. 46.

9. For regulating traffic on bridges and embankments and Woolwich Ferry : Metropolitan Board of Works (Various Powers) Acts, 1882 and 1885 ; L.C.C. (General Powers) Act, 1892.

10. For regulating plans, levels, materials, etc., of new streets : Metropolis Management Act, 1855, sect. 202 ; London Building Act, 1930, sect. 184.

11. For regulating the plans and level of sites for buildings, and the foundations and sites of buildings and other erections and the thickness and substance of walls.

12. For prevention of nuisances not otherwise punishable summarily : Municipal Corpsns. Act, 1882, sect. 23 ; P.H.A., 1875, sect. 187 ; L.G.A., 1888, sect. 16.

13. For prescribing times for removal of fæcal or offensive matter and refuse, and as to cesspools, waterclosets and ashpits : P.H. (London) Act, 1891, sects. 16, 39.

14. For regulating offensive businesses ; P.H. (London) Act, 1891, sect. 19.

15. For regulating dairies : P.H. (London) Act, 1891, sect. 28 and Orders.

16. For regulating parks and open spaces : Various Special Acts ; Metropolitan Board of Works Act, 1877 ; London Council (General Powers) Act, 1890, sects. 14—20 ; Open Spaces Act, 1906, sect. 15.

17. For verifying and stamping weights, measures and weighing machines : Weights and Measures Act, 1889, sect. 1.

18. For regulating sale of coal in small quantities, and prescribing conditions as to weighing and fees : Weights and Measures Act, 1889, sect. 28.

19. For regulating overhead wires : London Overground Wires, etc., Act, 1893.

20. For regulating seamen's lodging houses : Merchant Shipping Act, 1894, sect. 214.

21. For regulating the work of the Fire Brigade : Metropolitan Fire Brigade Act, 1865, s. 28.

22. For securing safety of public under Electric Lighting Acts : Electric Lighting Act, 1882, sect. 6.

23. For regulating houses divided into tenements : Housing Act, 1925, sect. 6.

24. For regulating form of appeal and modes of proceeding : Metropolis Management Act, 1855, sect. 202.

25. For protection from fire of theatres, music halls, etc., and for exits, etc., also Standing Orders as to licences : Metropolis Management Act, 1878, sect. 12 ; Metropolitan Board of Works (Various Powers) Act, 1882, sect. 45.

26. Regulating the emission of smoke and requiring the provision in new buildings (other than private dwelling houses) of arrangements for preventing or reducing the emission of smoke ; P.H. (Smoke Abatement) Act, 1926, sects. 2, 5.

27. As to the attendance of children at school ; Education Act, 1921, sect. 46.

28. As to the employment of children and other persons under the age of 18 years : Children and Young Persons Act, 1933, sects. 18, 19.

[778]

(2) *The Metropolitan Borough Councils may make Bye-laws as follows :*

1. For promoting cleanliness in and the inhabitable condition of tents, vans, etc., used for human habitation, and for preventing the spread of infectious disease, and generally for the prevention of nuisances therein : P.H. (London) Act, 1891, sect. 95.

2. For securing safety of public under Electric Lighting Acts : Electric Lighting Act, 1882, sect. 6.

3. For regulating open spaces under control of the borough council : Open Spaces Act, 1906, sect. 15.

4. For regulating their business, officers, etc. : Metropolis Management Act, 1855, sect. 202.

5. For prevention of nuisances arising from dust, ashes, and filth in streets, offensive matter from manufactories, slaughterhouses, etc., as to keeping of animals, paving of yards and open spaces, flushing waterclosets, cleansing cisterns, conduct of persons using public sanitary conveniences, and the management of mortuaries : P.H. (London) Act, 1891, sects. 16, 39, 45, 50, 88.

6. For regulating removal of patients from vessels to hospitals and their detention there if suffering from infectious disease : P.H. (London) Act, 1891, sect. 66.

7. For regulating baths and washhouses : Baths and Washhouses Act, 1846, sect. 34 ; P.H.A., 1925, sects. 85—87.

8. For regulating the use of every library, museum or art gallery under their control, and for enabling officers to exclude or remove persons committing offences : Public Libraries Act, 1901, sect. 3.

[779]

BY-PASS ROADS

	PAGE		PAGE
INTRODUCTION - - -	379	BY-PASSES ON HIGHWAY AUTHO-	
BY-PASSES ON MINISTRY OF TRANS-		RITIES' ROADS - - -	382
PORT ROADS - - -	380	PROTECTION OF BY-PASS ROADS -	382

See also titles : ROAD AMENITIES ;
ROAD GRANTS ;
ROAD MAKING AND IMPROVEMENT ;
ROADS CLASSIFICATION.

Introduction.—Although it is believed that the term “by-pass road” is not to be found in any Act of Parliament, the term is increasingly used by the general public and by the M. of T. and highway authorities. In earlier times it was considered a decided asset for a town to be on a main road, and many towns and villages owed their prosperity to that fact ; but with the increase of through traffic, that asset has become a disadvantage. There may still in some quarters remain the idea that “to by-pass traffic is to by-pass trade,” but in general there is little question that through traffic depreciates property by weakening buildings, disturbs amenity by noise and hampers the trading activities of the residents. For these reasons roads that enable fast traffic to pass by a village or the centre of a town are being increasingly constructed. These may be great trunk roads constructed and maintained by the M. of T., joining one large town to another ; they may be short lengths of new roads running from one point in an existing road to another point in the same road ; or they may be what are called “Ring Roads” or “Relief Roads,” usually constructed in large towns round the outskirts to relieve the traffic in the centre. Reasons for which such a by-pass may be constructed are suggested by the following points from the annual reports of the administration of the Road Fund : “to enable traffic to avoid the narrow streets and the congested area in the centre of the town,” “two level-crossings will be eliminated as far as through traffic is concerned,” “avoids a level-crossing and a village, and very narrow streets and dangerous cross-roads near an old priory,” “existing roads are very narrow and any comprehensive scheme of widening would involve considerable demolition,” “eliminates a long and dangerous bend,” “is planned to avoid a tramway track,” “saves distance, as the road through the village is very winding and contains many sharp and obscure corners.” The construction of a by-pass road, therefore, would be a purpose for which the Minister of Transport has power to give grants or make advances under sect. 8 of the Development and Road Improvement Funds Act, 1909 (a), and under sect. 17 of the M. of T. Act, 1919 (b).

By the Roads Act, 1920, sect. 3 (c), the Road Fund was established, from which the expenditure on the construction of the roads under the Act of 1909 was to be defrayed, and it was provided that the sums applied to the construction of new roads should not in any year exceed one-third of the estimated amount available from the Fund for road improvements, etc.

Nevertheless the practice as to the disposal of Road Fund monies is dependent upon the policy of the Government, and may change from year to year. [780]

The work of reconstruction under these Acts was first applied to the provision of new traffic facilities in or near London, such as the London—Southend Road, the North-Circular Road and the Watford and Barnet By-passes, and to these the term “arterial roads” was at first somewhat loosely applied, but later dropped. The policy of the Ministry has, however, been mainly directed to the reconditioning of important vital roads connecting the great towns, and a five years’ programme for the crucial portions of a selected group of main roads was created and this was called the Trunk Road Programme of 1924—25. The term “by-pass road,” such as the Kingston By-pass, is the name applied to lengths of new construction designed to relieve the congestion on important roads. By-pass roads were introduced for the purpose of giving better gradient or alignment or avoiding minor obstructions on roads already in existence, but in many instances in relation to built-up areas, they formed new ring roads or diversion roads of considerable lengths. [781]

By-passes on Ministry of Transport Roads.—The part of the L.G.A., 1929, relating to roads was the outcome of the policy of the M. of T. of co-ordinating the work of the highway authorities rather than in exercising their own powers under the Acts of 1909 and 1919. Sect. 8 of the Act of 1909 mentioned already (cc) gave the Road Board power to construct and maintain new roads with the approval of the Treasury. By sect. 9 of the same Act (d) these roads are declared to be public highways, usually after ceremonial dedication, and the enactments relating to highways and bridges apply to them, except that their maintenance is at the cost of the Ministry. The Minister has the powers of a county council, except as to the levying of a rate, for the purposes of maintenance and repair and for the preventing and removing of obstructions. The roads often include important bridges. The Minister may contract with a highway authority for them to undertake the maintenance and repair of the road, and when that is done, the authority have the same powers, duties and liabilities as if the road was vested in them. Communication between an ordinary road or path and a road constructed by the Minister may only be made in the manner approved by him. Before the Treasury approves of the construction of such a road, notice must be sent to all highway authorities in the areas through which the road is to pass, and any objections made by the authorities must be considered. Under sect 4 of the Unemployment (Relief Works) Act, 1920 (e), however, this need not be done where the Minister of Labour certifies that having regard to the exceptional amount of unemployment in the area it is desirable that the construction of the new road should be proceeded with forthwith for the provision of employment.

(c) 19 Statutes 87.

(d) 9 Statutes 213.

(cc) 9 Statutes 212.

(e) 20 Statutes 655.

By sect. 18 of the Act of 1909 (*f*), in executing any such work, and also in approving or making advances in respect of any work under the Act involving the employment of labour on a considerable scale, regard must, so far as is reasonably practicable, be paid to the general state and prospects of employment, and the summary powers under the Act of 1920 are chiefly used to give rights of entry upon land in order "to take possession" with as little delay as possible.

By sect. 5 of the Act of 1909 (*g*), the land for these roads may be acquired by purchase or gift, or it may be acquired compulsorily under an order of the Development Commissioners, but no land may be so acquired which forms part of any park, garden or pleasure ground, or forms part of a home farm attached to and usually occupied with a mansion house or is otherwise required for the amenity or convenience of any dwelling-house, or is the property of a local authority, or has been acquired by any corporation or company for the purposes of a railway, dock, canal, water or other public undertaking, or is the site of an ancient monument or other object of archæological interest. In making an order for compulsory purchase, the commissioners must have regard to the extent of land held or occupied in the locality by any owner or tenant, and to the convenience of other property belonging to or occupied by the same owner or tenant, and must as far as possible avoid taking an undue or inconvenient quantity from any one owner or occupier, taking into consideration the size and character of the agricultural buildings not taken, and must as far as possible avoid displacing any considerable number of agricultural labourers or others employed on the land in question.

By sect. 11 of the Act of 1909 (*h*), the Minister may acquire not only land for the purpose of the road itself but also an area of 220 yards on either side from the middle of the road. The method of obtaining an order of the Development Commissioners is not generally utilised, but by sect. 19 of the Act of 1909 (*i*), if such an order authorises the acquisition of any land forming part of a common, open space or allotment, it is provisional until confirmed by Parliament, unless it gives in exchange other land, not less in area, certified by the Minister of Agriculture and Fisheries to be equally advantageous to the persons entitled to the commonable rights, if any, and the public. Before giving such a certificate, the Minister of Agriculture and Fisheries must give public notice and afford opportunities to all persons interested to make representations and, if necessary, must hold a local inquiry. The land given in exchange, by sect. 3 of the Roads Improvement Act, 1925 (*k*), is to be deemed to be required for the purpose of the construction or improvement of the road, and the provisions of sect. 11 of the Act of 1909 as to acquisition apply accordingly. By sect. 19 (1), provisos (b) and (c) of the Act of 1909 (*l*), sub-sect. 1 of that section is not to apply to the acquisition of common land for the construction or improvement of a road within a rural district cannot be acquired under sect. 1, nor does the Act authorise the acquisition of land on either side of the new road where the land is part of a common, open space or allotment.

These provisions of the Act of 1909 are not affected by those as to the compulsory acquisition of land in Part VII. of the L.G.A., 1933, because by sect. 179 (*ll*) of that Act, nothing in Part VII. is to affect any

(*f*) 9 Statutes 216.

(*g*) 9 *Ibid.*, 211.

(*h*) *Ibid.*, 214.

(*i*) *Ibid.*, 216.

(*k*) *Ibid.*, 221.

(*l*) *Ibid.*, 216.

(*ll*) 26 Statutes 403.

provisions as to the acquisition, appropriation or disposal of land by a local authority contained in any enactment set out in the Seventh Schedule to the Act (*m*), and the Development and Road Improvement Funds Act, 1909, is mentioned in the Schedule. [782]

By-passes on Highway Authorities' Roads.—The creation of by-pass roads forms an important part of the work of highway authorities. The law as to their construction, maintenance, the acquisition of the necessary land and obtaining of grants from the Minister of Transport is therefore the same as for other roads, and is dealt with in the titles COMPULSORY PURCHASE OF LAND, ROAD GRANTS and ROAD MAKING and IMPROVEMENT. Where the road is constructed by a highway authority with the aid of a grant from the Ministry, the obligations as to commons, open spaces and allotments, which are set out in sect. 174 of the L.G.A., 1933 (*mm*), apply. Where the whole of the road is in one highway area the cost is a matter of arrangement between that highway authority and the Minister of Transport, but where the by-pass joins roads in one or more highway areas, agreement must be made under sect. 3 of the Highways and Bridges Act, 1891 (*n*), which gives the councils of adjoining highway authorities to power make and carry into effect agreements with each other. A contribution from a county borough which obtains the benefit of a by-pass road freeing it from through traffic, but not passing through its area, may be provided for in any such agreement, and also the payment by the town by-passed of a larger proportion of the cost than by the remainder of the county in respect of special benefit, such as employment provided for the town's unemployed labour.

The right and power to claim to maintain county roads of the council of a borough or urban district having a population exceeding 20,000 under sect. 32 (1) of the L.G.A., 1929 (*m*), and the making of an order declaring the road to be a "county road" under sect. 37 of the same Act (*o*) are applicable to new roads, including by-passes, in so far as the by-pass is a new road or otherwise comes within the category of county road for the first time. In general these claims are resisted by the county council as tending to defeat the main purpose of the 1929 Act in vesting all roads and the responsibility for them in the county councils, subject to such delegation as they may in their discretion exercise under sect. 35 (*p*). [783]

Protection of By-pass Roads.—As by-pass roads are generally constructed through open country it should be possible to protect their amenities more easily than those of existing roads, and for this the title ROAD AMENITIES should be consulted. In many cases opportunity is taken to make provision for a gyrating system and for traffic lights at junctions. Special attention can also be given to this subject under the Town and Country Planning Act 1932; see under title TOWN AND COUNTRY PLANNING. Matters mentioned in the Second Schedule to that Act (*q*) which may be dealt with by schemes include streets, roads and other ways, and buildings, structures and erections. Schemes may be made so as to prevent ribbon development, to control buildings and other structures on the frontages, and the planning of subsidiary roads with controlled connections. Advertisements can be regulated under sect. 47 of that Act (*r*) or under the Acts regulating advertisements generally; see under title ADVERTISE-

(*m*) 26 Statutes 509.
(*nn*) 10 Statutes 906.
(*q*) 25 Statutes 528.

(*mm*) *Ibid.*, 401.
(*o*) *Ibid.*, 912.

(*n*) 9 Statutes 192.
(*p*) *Ibid.*, 910.
(*r*) *Ibid.*, 513.

MENTS. As to the control of petrol filling stations, see the title PETROL FILLING STATIONS (*rr*). By sect. 19 of the Town and Country Planning Act, 1932 (*s*), compensation need not be paid in respect of the injurious affection of property by provisions limiting the number of buildings, or prohibiting the use of land for a purpose likely to involve serious detriment to the neighbourhood.

Protection may also be given under private Acts, such as sect. 67 of the Surrey County Council Act, 1931 (*t*), which prohibits access to and connection by new roads with the by-pass except at points approved by the county council, in the same way as sect. 9 of the Development and Road Improvement Funds Act, 1909, mentioned above, prohibits such connection in regard to M. of T. roads. [784]

(*rr*) As to petroleum filling stations in London, see the L.C.C. (General Powers) Act, 1933, s. 69; 26 Statutes 598.

(*s*) 25 Statutes 492.

(*t*) 21 & 22 Geo. 5, c. cl.

CABLES

See ELECTRICITY SUPPLY; HARBOURS.

CABMEN'S SHELTERS

See also titles: HACKNEY CARRIAGES;
LONDON ROADS AND TRAFFIC;
ROAD TRAFFIC.

The only statutory provision with regard to cabmen's shelters, apart from local Acts, is to be found in sect. 40 of the P.H.A. Amendment Act, 1890 (*a*). Sub-sect. (1) of this section, which is in force in any borough or urban district, the council of which has adopted Part III. of the Act, provides that "An urban authority may from time to time provide, maintain, and remove in or near any street in their district suitable erections for the use, convenience and shelter of drivers of hackney carriages, and such other persons as the urban authority may permit to use the same." [785]

The powers of urban authorities under sect. 40 of the Act of 1890, may be exercised with the consent of the county council, by R.D.Cs. in relation either to the whole of the rural district, or, if so resolved, in relation to one or more contributory places therein (*b*). A county council may also exercise these powers in a rural district and, in a borough or urban district as respects county roads, under sects. 30 (3) and 31 of the L.G.A., 1929, and Parts II. and V. of the First Schedule to that Act (*c*). No adoption of the Act of 1890 by the county council is necessary, as is stated in the footnote to the Schedule in question. [786]

(*a*) 13 Statutes 839.

(*b*) See R.D.C. (Urban Powers) Order, 1931 (S.R. & O., 1931, No. 580).

(*c*) 10 Statutes 904, 905, 977, 978.

Apart from statutory sanction, a cabmen's shelter, if placed in a highway, would be an obstruction and a nuisance, and, of course, wherever placed, it could only be provided or maintained at private expense. [787]

The council "may from time to time make regulations for prescribing the terms and conditions and the fees (if any) to be charged for the use of such places of shelter, and may make bye-laws for regulating the conduct of persons using the same" (sect. 40 (2)). Any such bye-laws will be made by virtue of the P.H.A.'s., 1875 to 1932, and the procedure in making them and obtaining their confirmation will be that laid down in sect. 250 of the L.G.A., 1933 (*d*). The regulations, obedience to which can only be enforced by exclusion from privileges or by virtue of some agreement, will be subject to sect. 188 of the P.H.A., 1875 (*e*), and do not need confirmation by the Minister of Health. No model bye-laws relating to cabmen's shelters have been issued by the Minister of Health. [788]

London.—In London, there seems to be no enactment in force corresponding to sect. 40 of the P.H.A. Amendment Act, 1890. Where it is desired that a cabmen's shelter should be provided on a highway, it is understood that an application is made to the metropolitan borough council for their consent, but whether this is given under sect. 91 of the London Building Act, 1930 (*f*), as to the erection of wooden structures, or some other enactment is not clear. Any such application is referred by the borough council to the Commissioner of Metropolitan Police for a report whether the building would cause any serious obstruction to street traffic or is otherwise open to objection. Regulations made by the Commissioner of Metropolitan Police on May 20, 1910, under sect. 4 of the London Hackney Carriages Act, 1850 (*g*), dealt with the conduct of drivers at any stand at which a shelter is provided. The office of the Cabmen's Shelter Fund is at 48 Dover St., London, W.1. [789]

(*d*) 26 Statutes 440.
(*f*) 23 Statutes 266.

(*e*) 13 Statutes 706.
(*g*) 19 Statutes 143.

CABS

See HACKNEY CARRIAGES ; LONDON ROADS AND TRAFFIC.

CALCIUM CARBIDE

See CARBIDE OF CALCIUM.

CAMBRIDGE, BOROUGH OF

The municipal government of the Borough of Cambridge, by reason of the existence within it of the University of Cambridge, has certain peculiar features. Charters were from time to time granted both to the corporation and to the university, and the rights and privileges in those charters gave rise to disputes on the ground that the functions of the two corporate bodies overlapped or were in conflict.

The main issues arising from the conflict of charters were settled by Sir John Patteson as arbitrator in 1856 in an award which was subsequently incorporated in a local Act of Parliament (*a*).

The control of town improvements so far as they were carried out by Improvement Commissioners had been settled previously by including as commissioners certain magistrates and officers of the university, as well as certain magistrates and persons of the corporation of the borough (*b*).

Under the P.H.A., 1875, sect. 6, Cambridge was not deemed a borough but an Improvement Act District, and the Improvement Commissioners continued to be the urban sanitary authority. It was not until 1889 that the borough council by virtue of a provisional order (*c*) made under sect. 52 of the L.G.A., 1888, became the urban sanitary authority, and the university were given direct representation on the borough council.

The control of the police force of the borough had previously been in the hands of the Watch Committee of the borough council, and the university had direct representation on that committee, which since Sir John Patteson's award has consisted of the mayor and nine other members of the borough council appointed by the council and five members of the university appointed by the Senate of the university (*d*).

The representation of the university on the borough council consists of six councillors and two aldermen. Two councillors are nominated by the council of the Senate and elected by a grace of the Senate; four councillors are elected by the colleges and halls of the university.

The aldermen are elected by the borough council from among the councillors elected to represent the university.

Two of the university councillors go out of office each year and one of the university aldermen every third year (*e*).

The total number of borough councillors was increased from thirty to thirty-six in 1889 to allow for this direct university representation.

On an extension of the borough in 1912, the total number of councillors was increased from thirty-six to fifty-one, and of aldermen from twelve to seventeen, without altering the university representation (*dd*).

(*a*) Cambridge Award Act, 1856; 19 & 20 Vict. c. xvii.

(*b*) Stats. (1788), 23 Geo. III., c. 64; (1794), 34 Geo. III., c. 104.

(*c*) See the Local Government Board's Provisional Orders Confirmation (No. 15) Act, 1889; 52 & 53 Vict. c. exvi.

(*d*) See Cambridge Award Act, 1856, s. 51; 19 & 20 Vict. c. xvii.

(*dd*) See now the Cambridge (Extension) Order, 1934, made by the Minister of Health under L.G.A., 1929, s. 46, dated February 12, 1934.

The university also have direct representation on the Assessment Committee. They had four representatives on the Assessment Committee for Cambridge before the operation of the R. & V.A., 1925, and when the county council made an order constituting the Borough of Cambridge an Assessment Area under that Act, the university were given four representatives on the Assessment Committee for that area.

Apart from this special direct representation, there are certain other matters peculiar to this borough. The proctors and pro-proctors (university officers appointed to maintain discipline among the members of the university) have the powers of constables and have also a right to enter any premises licensed for the sale of intoxicating liquors at any time, and any premises licensed for public entertainment so long as any members of the public are there (*e*).

The county council have special power to revoke a stage-play licence if complaint is made by the vice-chancellor or mayor, and the justices have power to revoke any licence for other public entertainments on a similar complaint (*f*).

The university still retain (and exercise) the right to grant licences for the sale of wine (*g*).

The mayor of the borough has no precedence over the vice-chancellor of the university (*h*). [790]

(*e*) Cambridge University and Corpn. Act, 1894, s. 7 ; 57 & 58 Vict. c. lx.

(*f*) *Ibid.*, ss. 9 and 10.

(*g*) Cambridge Award Act, 1856, s. 11 ; 19 & 20 Vict. c. xvii.

(*h*) Municipal Corpns. Act, 1882, s. 257 (2) ; 10 Statutes 658 ; now repealed and re-enacted in the L.G.A., 1933, s. 302 ; 26 Statutes 464.

CAMPS

See EDUCATION SPECIAL SERVICES ; TENTS, SHEDS AND VANS.

CANAL BOATS

	PAGE		PAGE
INTRODUCTORY - - -	387	INFECTIOUS AND OTHER SERIOUS	
REGISTRATION - - -	388	DISEASES - - -	389
MARKING, ETC. - - -	389	EDUCATIONAL PROVISIONS - - -	390
SANITARY CONDITIONS - - -	389	GENERAL - - -	390
		LONDON - - -	391

See also title : CANALS.

Introductory.—The occupation of canal boats as dwellings is governed by the Canal Boats Acts, 1877 (*a*) and 1884 (*b*), and sect. 50 of the Education Act, 1921 (*c*), with the general order made by the Local Government Board, dated March 20, 1878 (*d*), amended by the Canal Boats Orders of 1922 (*e*), 1925 (*f*) and 1931 (*g*), made by the Minister of Health.

A "canal boat" is defined by sect. 14 of the Act of 1877, as meaning any vessel, however propelled, which is used for the conveyance of goods along any canal (including any river, inland navigation, lake, or water being within the body of a county, whether it is or is not within the ebb and flow of the tides), and which is not a ship duly registered under the Merchant Shipping Acts; but this definition has been extended by sect. 10 of the Act of 1884, which enables the Minister of Health, if he sees fit, to declare that particular classes of vessels shall not be deemed to be excluded merely because they are registered as ships. By the Canal Boats Order, 1922 (*h*), the Acts are made to apply to all vessels within the definition of canal boats except (a) sea-going ships, and (b) sailing barges of the class generally known as "Thames Sailing Barge." The term "owner" of a canal boat is defined as including a hirer of a boat, who appoints its master and crew; and "master" means the person having for the time being command or charge of the boat (sect. 14, *supra*).

The provisions of the statutes and regulations deal with five main subject-matters: (i.) the registration of canal boats used as dwellings; (ii.) the numbering and marking of such boats for purposes of identification; (iii.) general sanitary provisions; (iv.) provisions with regard to infectious and other serious diseases; and (v.) provisions with regard to the education of children living on such boats. There are, in addition, a number of general provisions regulating the administration and enforcement of the law. **[791]**

(*a*) 13 Statutes 788.

(*c*) 7 Statutes 158.

(*d*) S.R. & O., Rev. 1904, Vol. 1. See Lumley's Public Health, 10th ed., p. 3088.

(*e*) S.R. & O., 1923, No. 451.

(*f*) S.R. & O., 1925, No. 843.

(*g*) S.R. & O., 1931, No. 444.

(*h*) See also Circular of the M. of H., dated May 1, 1923 (21 L. G. R. (Orders), 42); and Lumley, 10th ed., p. 3096.

(*b*) *Ibid.*, 803.

Registration.—Under sect. 1 of the Act of 1877, no canal boat may be used as a dwelling unless it is duly registered, and then only for such number of persons of different ages and sexes as may be specified in its certificate of registration. The registration authority is such one or more of the sanitary authorities having districts abutting on a canal as may be prescribed by the regulations (sect. 7), and under Article 1 of the Regulations of 1878 the owner of a canal boat may apply to a registration authority having a district abutting on the canal on which the boat is accustomed or intended to ply. Port sanitary authorities, as well as the councils of boroughs and districts are recognised by sect. 14 of the Act of 1877 as sanitary authorities, but as the district of a port sanitary authority consists only of waters, together with docks and wharves abutting on waters, their districts do not often abut on a canal, so as to bring them within the terms of Article 1 of the Regulations of 1878, and make them eligible for the receipt of applications for registration.

Upon receipt of an application, stating when and where the boat can be examined, the authority must send an examiner to report on it; the latter must see that the boat complies with the conditions specified in Article 3 of the Regulations as to air space and accommodation generally, and must make a report thereon in the form prescribed by the Regulations. If the conditions are in fact complied with, the authority must register the boat, and the entry in the register will show (*inter alia*) the number, age and sex of the persons by whom it may be used as a dwelling. Before the delivery of the certificates of registration, the owner of the boat must pay a fee of 5s. (Art. 6). The boat having been registered, by sect. 3 of the Act of 1877 and Article 5 of the Regulations, the authority must hand to the owner two copies of the certificate of registration in a form prescribed by the Regulations; one copy of such certificate must remain in the custody of the master of the boat, and must upon demand be produced by him to authorised persons. By sect. 1 of the Canal Boats Act, 1884, any subsequent structural alteration in the boat, affecting the conditions on which the certificate of registration was obtained, will necessitate re-registration. The Canal Boats Order of 1925, which repealed Article 4 as to notifying a change of master, added to Article 3 that the owner must maintain the boat in the condition required to make it eligible for registration, and on a conviction for a default may have his certificate of registration suspended or cancelled in lieu of or in addition to a penalty.

The forms prescribed by the Local Government Board for reports upon canal boats by the examiners of local authorities, the register of canal boats and certificates of registration are scheduled to the Regulations, and may be found in Lumley's Public Health (*i*). Other forms connected with canal boats are contained in the Encyclopædia of Forms and Precedents, under the title "Public Health." The register is to contain particulars of the registration number of the boat, its name or any number which it bears, the name and address of the owner and the name of the master; the route along which it is intended to ply and the nature of the traffic on which it is to be employed; its mode of propulsion, whether it is a "wide" or a "narrow" boat, and whether it is to be used as a "fly" boat worked by shifts; the number, dimensions and cubical capacity of the cabins with the maximum number of persons for which the boat is registered, subject to the

(i) See Tenth Edition at pp. 3091—3095.

prescribed conditions as to the separation of the sexes given in Article 8 of the Regulations. The dates of application, examination and registration are to be added and the place to which the boat is registered as belonging for the purposes of elementary education.

By Article 14, a "wide" boat is one not less than seven feet six inches in beam, and a "narrow" boat is one of less beam. A "fly" boat is not defined, but is a boat (usually a narrow one) which plies by night as well as by day.

The form of examiner's report is framed upon the same lines as the register; but, in addition to the details mentioned above, it deals also with the general condition of the boat, supply of lockers and bunks, means of heating and of ventilation, etc. The rules for estimating the cubical capacity of "wide" and "narrow" boats respectively, are contained in notes to the form of report. The certificate of registration contains in a condensed form the more important details included in the register, and a reference to any distinctive "marks" to be placed upon the boat; it also sets out Article 8 *in extenso*, for the guidance of masters. [792]

Marking, etc.—Upon receipt of the certificates, the owner must at once have the boat lettered, numbered and marked so as to correspond with the contents of the certificate, and in such a manner as to comply with the requirements as to size of letters, etc., prescribed by sect. 3 of the Act of 1877, sect. 7 of that of 1884 and Article 7 of the Regulations of 1878. The letters must be kept legible and undefaced, and in default the boat is to be deemed unregistered. [793]

Sanitary Conditions.—So far as methods of construction, air space, and decency of sleeping accommodation are concerned, provision is made by Articles 3 and 8 of the Regulations above referred to. With regard to the maintenance of boats in a proper condition, Article 9 imposes upon an owner the duty of thoroughly painting the inside of every cabin once at least in every three years. Article 10 requires a master to cause all bilge water to be pumped out as often as may be necessary, and at least once in every twenty-four hours; and Article 11 makes the master responsible for every cabin used as a dwelling being kept at all times in a cleanly and habitable condition. [794]

Infectious and other Serious Diseases.—Whenever any person on a canal boat is seriously ill or is evidently suffering from an infectious disease, the master must, as soon as possible, notify the fact to the various sanitary authorities within whose districts the boat may be or may pass, and, on reaching its destination also to the owner of the boat (Article 12). The latter, upon receiving information from the master that any person on board is, or has been, suffering from an infectious disease must thereupon give notice to the sanitary authority of the boat's place of registration (*ibid.*). Any sanitary authority upon learning that there is a case of infectious illness on board a canal boat at the time within their district, are directed by sect. 4 of the Act of 1877 to take such steps as may be recommended to them for checking the spread of infection; they may procure the removal of a patient to hospital, and exercise any other powers conferred upon them by the P.H.A., 1875 (*k*). Under sect. 4 of the Act of 1877 they may also detain

(*k*) See P.H.A., 1875, ss. 120—125; 13 Statutes 674—676; and P.H. (Ships, etc.) Act, 1885; *ibid.*, 806.

the boat, but only for such period as is necessary for cleansing and disinfecting it; and after a boat has been thus detained, by Article 13 they must obtain and hand to the master a medical certificate that the boat has been properly cleansed and disinfected. Sect. 61 of the P.H.A. Amendment Act, 1907 (*l*), as to the removal by the local authority of persons from infected premises to a place of shelter, applies to canal boats in any borough or district in which that section has by order been put in force, by virtue of the definition of "house" in sub-sect. (3). The provisions of the Infectious Disease (Notification) Act, 1889, apply to canal boats as if they were buildings (*m*). [795]

Educational Provisions.—By sect. 50 of the Education Act, 1921 (*n*), which re-enacted sect. 6 and the definition of parent in sect. 14 of the Act of 1877, and sects. 5 and 6 of the Act of 1884, a child in a registered canal boat, and the parent of such child (defined in sect. 170 (12) (*nn*), as including guardian and every person who is liable to maintain or who has the actual custody of the child) are, for the purposes of elementary education to be deemed to be resident in, and subject to any bye-laws in force in, the place to which the boat is registered as belonging. If, however, a parent satisfies the education authority concerned that his child is being efficiently instructed in some other district, the authority must grant him a certificate to that effect, and thereupon he and the child are to be deemed resident in such other district. Sect. 12 of the Act of 1877 authorises the maintenance of elementary schools for children living on canal boats by any company or association owning boats, or being the owners or lessees of a canal.

Regulations as to the form of school certificates to be used by children on canal boats may be made by the Board of Education under sect. 50 of the Act of 1921, but so far the power has not been exercised. [796]

General.—By sect. 5 of the Act of 1877 as extended by sect. 9 of the Act of 1884, any person duly authorised by a registration or sanitary authority, or by a justice of the peace, may enter and examine, between the hours of 6 a.m. and 9 p.m., any canal boat on which he has reasonable cause to suppose that there is any contravention of the Acts or any infectious disease; he must be ready to produce a copy of his authority or some other evidence of his appointment, and the master must give him all assistance in performing his duties. A similar power of entry is given to the inspectors appointed (see *infra*) by the M. of H. under sect. 4 of the Act of 1884.

Penalties for contravention of the provisions of the statutes are imposed upon masters and owners by the various sections of the Act of 1877, and penalties for breach of the Regulations by sect. 2 of the Act of 1884.

Sect. 3 of the Act of 1884 imposes upon registration and sanitary authorities the duty of enforcing the statutes and Regulations, and requires them to make an annual report upon the subject to the M. of H. within the first three weeks of every year.

The expenses of borough councils and urban district councils will be defrayed under sects. 185 and 188 of the L.G.A., 1933 (*o*), out of the general rate fund, and the expenses of rural district councils will be

(*l*) 13 Statutes 933.

(*n*) 7 Statutes 158.

(*o*) 26 Statutes 406, 408.

(*m*) S. 13; *ibid.*, 815.

(*nn*) *Ibid.*, 213.

defrayed as general expenses under sect. 190 (2) (oo) of that Act, unless they are by order of the M. of H. declared to be special expenses. Fees and fines are to be applied towards expenses under sect. 11 of the Act of 1877, and sect. 8 of the Act of 1884.

The M. of H. is to make an annual report to Parliament as to the execution of the Acts, and for that purpose is to instruct inspectors to make inquiries from time to time (p). Similarly by sect. 50 of the Education Act, 1921 (q), the Board of Education are to report annually to Parliament, after communication with the local education authorities, as to the manner in which the provisions of that Act as to elementary education are enforced with respect to children on canal boats.

Special reference is made to the loading, conveyance and landing of petroleum spirit in or upon a canal, by the Petroleum (Consolidation) Act, 1928 (r), which gave powers to canal companies to make bye-laws as to the precautions to be observed. These bye-laws must be confirmed by the Minister of Transport, and there may be a fine of £20 a day if they are contravened. By Regulations made in 1931 (s), para. (f) of Article 3 of the Regulations of 1878 (which required a stove to be fitted in at least one cabin), is not to apply to any canal boat used or intended to be used for the carriage of cargoes consisting wholly or partly of petroleum.

In the year 1930, much discussion was aroused by the introduction by Mr. Gosling, M.P. of a Bill for the purpose of prohibiting children of school age from living on canal boats. Although the Bill was read a second time, with the concurrence of the Labour Government, by 180 votes to 64 it did not become law. [797]

London.—The Canal Boats Acts referred to above are equally applicable to London, and the councils of the metropolitan boroughs are registration authorities (t). Special arrangements are made by the L.C.C. under sect. 50 of the Education Act, 1921 (q), for the education of children residing on canal boats. The majority of canal boats passing through London are tied up for loading or discharging in the Paddington Basin, and a special class has been formed in the Boatman's Institute in Paddington for educating the children. The canal boat children are required to attend the class while the boat remains in the Basin, the parents being allowed to withdraw the children when the boat moves to another district. The average roll of the class is 60; the average attendance fluctuates between 9 and 15. Bye-laws with regard to houseboats, made under the City of London (Various Powers) Act, 1933, sect. 6 (u), do not apply to canal boats registered under the Canal Boats Acts. [798]

(oo) 26 Statutes 409.

(p) Canal Boats Act, 1884, s. 4; 13 Statutes 803.

(q) 7 Statutes 158.

(r) S. 9; 13 Statutes 1175.

(s) Canal Boats (Amendment) Regulations, 1931 (S.R. & O., 1931, No. 444).

(t) Canal Boats Act, 1877, ss. 7, 14; 13 Statutes 791, 792.

(u) 26 Statutes 591.

CANALS

	PAGE		PAGE
GENERAL OBSERVATIONS -	392	CONSTRUCTION OF WORKS BY	
BRIDGES AND APPROACHES -	393	LOCAL AUTHORITIES -	396
TOWING-PATHS -	394	PRIVATE STREET WORKS -	397
SEWERS AND POLLUTION -	395	OTHER SAVINGS FOR CANAL COM-	
BUILDINGS AND SKY SIGNS -	396	PANIES -	397
		LONDON -	399

See also titles : CANAL BOATS ;
POLLUTION OF RIVERS ;
RATING OF SPECIAL PROPERTIES

General Observations.—A canal company is usually created by a special Act of Parliament authorising the construction of the particular canal, and the undertaking is governed by the provisions of the special Act.

By the Regulation of Railways Act, 1873, sect. 3 (a), “canal” includes “any navigation which has been made under or upon which tolls may be levied by authority of Parliament, and also the wharves and landing-places of and belonging to such canal or navigation and used for the purposes of public traffic,” while “canal company” includes “any person being the owner or lessee of, or working, or entitled to charge tolls for the use of any canal in the United Kingdom constructed or carried on under the powers of any Act of Parliament.” [799]

By the Bridges Act, 1929, sect. 14 (b), “canal” includes inland navigation and the towing-paths of canals, and the owner of a canal includes any company to which the canal is leased. “Statutory undertakers” are defined by the Town and Country Planning Act, 1932, sect. 53 (c), so as to include “any persons authorised by or under an Act of Parliament, or an order having the force of an Act of Parliament, to construct, work or carry on any canal.” The concern of local authorities with canals arises mainly in connection with the laying of sewers or water mains through land traversed by a canal, in regard to bridges over canals and their approaches, and in the saving clauses in favour of canal companies in many of the Acts administered by local authorities. As to the rating of canals see under title RATING OF SPECIAL PROPERTIES. Charges, traffic and matters generally relating to canals are dealt with under the Canal Tolls Act, 1845 (d); the Regulation of Railways Act, 1873 (e); and the Railway and Canal Traffic Act, 1888 (f). The powers of the Board of Trade with regard to canals were transferred to the Minister of Transport by the Ministry of Transport Act, 1919 (g), and under sect. 17 of that Act the Minister was empowered to make advances, with the consent of the Treasury, for the construction, improvement or maintenance of canals. [800]

(a) 14 Statutes 199.

(b) 9 Statutes 275.

(c) 25 Statutes 521. See also P.H.A., 1925, s. 7 (3); 13 Statutes 1117.

(d) 14 Statutes 84 *et seq.*

(e) *Ibid.*, 199.

(f) *Ibid.*, 220. And see other Acts under title “Railways and Canals” in 14 Statutes.

(g) 3 Statutes 422; and see S.R. & O., 1919, No. 1440.

By sect. 45 of the Railway and Canal Traffic Act, 1888 (*h*), where, on the application of a canal company, it appears to the Minister of Transport that any canal or part of a canal belonging to the applicants is unnecessary for the purposes of public navigation, or where, on the application of any local authority, or of three or more owners of lands adjoining or near to any canal or part of a canal, it appears to him that the canal has for at least three years past been disused for navigation, or become unfit for navigation by reason of the default of the proprietors, or that the lands adjoining or near to the canal have suffered injury by water that has escaped from the derelict canal, and that the proprietors decline or are unable to effect the necessary repairs, he may by warrant authorise the abandonment of the canal by the existing proprietors.

The Minister may then make an order releasing the canal proprietors from all liability to maintain the canal, and from all statutory and other obligations in regard to it, but he must be satisfied that (i.) the canal is unnecessary for the purposes of public navigation, (ii.) that the application has been properly authorised by the shareholders of the company and the necessary public and other notices have been given, and (iii.) that compensation has been made to all persons entitled to it, by reason of the abandonment of the canal. The amount of compensation is to be determined by the Minister of Transport in case of difference. Local authorities who may complain include county councils, borough councils and district councils, and also harbour boards and conservancy authorities (*i*). [801]

By sect. 40 of the Act of 1888 (*k*) canal companies must send to the Minister of Transport any bye-law or regulation that they make, and these shall not have force until approved by the Minister, and the Minister may at any time disallow the bye-law or regulation, and it then has no effect, except where a penalty has already been incurred under it. The provisions of this section were excluded from application to bye-laws under sect. 9 of the Petroleum (Consolidation) Act, 1928 (*l*), which gives canal companies powers to make bye-laws regulating the loading, conveyance and landing of petroleum spirit and as to the precautions to be observed, and as to the enforcement of the bye-laws. Bye-laws, however, under this section cannot come into force till they are confirmed by the Minister of Transport, and any one contravening such a bye-law may on summary conviction be fined up to £20 for every day on which the offence occurs or continues.

Canal companies are among the statutory undertakers for whom special provision is made in relation to the deferring of claims for betterment under the Town and Country Planning Act, 1932, sect. 21 (2), proviso (ii.) (*m*). As to deferring claims for betterment, see *ante*, title BETTERMENT.

Under sect. 31 of the same Act (*n*) statutory undertakers may pay to any town planning authority the whole or any part of any expenses incurred by the authority in or in connection with the preparation or carrying into execution of a scheme. [802]

Bridges and Approaches.—There is no statutory code as to canal bridges, and the Railways Clauses Consolidation Act, 1845, does not relate

(*h*) 14 Statutes 242. See also *In re Woking U.D.C. (Basingstoke Canal) Act*, 1911, [1914] 1 Ch. 300.

(*i*) Railway and Canal Traffic Act, 1888, ss. 45 (7) and 7; 14 Statutes 222.

(*k*) 14 Statutes 240.

(*l*) 13 Statutes 1175.

(*m*) 25 Statutes 497.

(*n*) *Ibid.*, 505.

to them. Reference must be made in each instance to the special Act under which the canal was made. Under the common law doctrine of liability *ratione nocuenti* where persons for their own purposes interrupt a highway by some work which renders it impossible for the public to use it, an obligation is imposed on them to construct such works as may be necessary to restore to the public the use of the highway so interrupted (*o*). It was held that this common law doctrine was not rendered inapplicable by the special Acts of the company (*p*). As to the liability to repair bridges generally, see under title BRIDGES.

By sect. 147 of the P.H.A., 1875 (*g*), any urban authority may agree with the proprietors of a canal to adopt and maintain any existing or projected bridge, viaduct or arch within their district, over or under any canal and the approaches to it, and may then adopt and maintain them as part of public streets maintainable and repairable by the inhabitants at large. They may also themselves agree to construct any such bridge, viaduct or arch at the expense of the proprietor, and with the consent of two-thirds of their number may pay any portion of the expenses of the construction or alteration of the bridge, viaduct or arch or for the purchase of adjoining lands required for its foundation and support, or for its approaches.

By sect. 25 (1) of the L.G.A., 1894 (*r*), these powers were extended to rural district councils, but by sect. 30 (2) and Part I. of the First Schedule to the L.G.A., 1929 (*s*), were transferred to the county council, without the condition as to the consent of two-thirds of their number.

In a non-county borough or urban district, a similar transfer to the county council was made of the powers of the urban authority by sect. 31 (5), and Part III. of First Schedule to the Act of 1929 (*t*), but limited to county roads and roads which when constructed are intended to become county roads, not being roads which the council of the borough or urban district maintain and repair.

County councils have power to purchase or take over by agreement, existing bridges, and to erect new ones and to maintain, repair and improve them under sect. 6 of the L.G.A., 1888 (*u*), and this power is largely extended by the Bridges Act, 1929 (*a*), the whole of which applies to bridges over canals (see *post* and under title BRIDGES). As to the powers of the Post Office in regard to placing poles along canals, see the Telegraph Act, 1863, sects. 32 and 33, the Telegraph Act, 1878, sects. 3 and 4, and the Telegraph (Construction) Act, 1911 (*b*). [803]

Towing-Paths.—There is not necessarily a right-of-way along a towing-path, but it may be dedicated to the public by the canal company provided this is not incompatible with its use as a towing-path (*c*). The position of the towing-path as a public footpath on the abandonment of a canal as described above is a question of dedication. As to

(*o*) *Rex v. Kerrison* (1815), 3 M. & S. 526; 26 Digest 581, 2712.

(*p*) *Herfordshire C.C. v. Great Eastern Railway Co.*, [1909] 2 K. B. 403; 26 Digest 587, 2778, and see *Reigate Corp. v. Surrey C.C.*, [1928] Ch., at p. 365. And as to cases on liability to repair the approaches, see *Macclesfield Corp. v. Great Central Rail. Co.*, [1911] 2 K. B. 528; 26 Digest 581, 2713, and other cases on pp. 580—582 and 586—587 of 26 Digest.

(*g*) 13 Statutes 684.

(*r*) 10 Statutes 794.

(*s*) *Ibid.*, 904 and 975 *et seq.*

(*t*) *Ibid.*, 906, 977.

(*u*) *Ibid.*, 691.

(*a*) 9 Statutes 268 *et seq.*

(*b*) 19 Statutes 233, 262, 263 and 300 *et seq.*

(*c*) *Grand Junction Canal Co. v. Petty* (1888), 21 Q. B. D. 273; 26 Digest 290, 226; *Thames Conservators v. Kent*, [1918] 2 K. B. 272; 44 Digest 114, 914, and other cases on pp. 290, 291 of 26 Digest.

sewers under towing-paths, and as to wires along towing-paths, see *post*. As to the validity of bye-laws of the Thames Conservancy, prohibiting the riding or driving of horses on a towing-path, except when engaged in towing, or the driving of vehicles on a towing-path, see *Thames Conservators v. Kent* (d). No local authority may, under the P.H.A., 1875, interfere with any towing-path so as to interrupt the traffic on it without the consent in writing of the canal company (e). As to the diversion or alteration of sewers which interfere with towing-paths and as to towing-paths under the Private Streets Works Act, see *post*. [804]

Sewers and Pollution.—For this subject generally, see under titles POLLUTION OF RIVERS and SEWERS AND DRAINS. The powers of local authorities to carry sewers through, across or under the property of canal companies is subject to the consent of the company in writing, under sect. 327 of the P.H.A., 1875 (f); see *post*.

Under sect. 17 of that Act no local authority may make or use any sewer, drain or outfall for the purpose of conveying sewage or filthy water into any canal until it has been freed from all excrementitious or other foul or noxious matter which would affect or deteriorate the purity and quality of the water in the canal (g). If the water is already foul it is no offence under this section to discharge sewage into it unless it makes it fouler (h). Filthy water is distinguishable from sewage and includes any matter whether foul or noxious, such as tar from roads, which would affect or deteriorate the purity and quality of the water (i).

The provision is contravened if the purity and quality of the water in a canal is deteriorated at the point of discharge of a sewer; it is not necessary to show deterioration to the canal in general (k). Where a local authority made storm-water outlets from a sewer into a stream, and in an exceptionally heavy storm these were not sufficient, and the water flooded surrounding land, it was held that they had power under sect. 17 to discharge the surplus water, and were not liable for a nuisance; their neglect to improve the system of drainage was non-feasance, and the remedy, if any, was by an application to the Minister of Health under sect. 299 of the P.H.A., 1875, and assessment of compensation under sect. 308 of the Act (l).

Under sect. 331 of the P.H.A., 1875 (m), any canal company may, at their own expense, and on substituting other sewers, drains, culverts and pipes equally effectual, and certified as such by the surveyor to the local authority, take up, divert, or alter the level of any sewers, drains, culverts or pipes constructed by any local authority which pass under or interfere with the canal or the towing-path, and they may do anything necessary to carry the diversion or alteration into effect. No consent of the council is required, but the surveyor must certify the work as satisfactory after it is completed. [805]

(d) [1918] 2 K. B. 272; 44 Digest 114, 914.

(e) P.H.A., 1875, s. 327 (3); 13 Statutes 760.

(f) *Ibid.*, 759.

(g) *Ibid.*, s. 17; *ibid.*, 633.

(h) *A.-G. v. Birmingham Drainage Board*, [1912] A. C. 788; 41 Digest 30, 226.

(i) *Dell v. Chesham U.D.C.*, [1921] 3 K. B. 427; 26 Digest 408, 1290.

(k) *A.-G. v. Ringwood R.D.C.* (1928), 92 J. P. 65; Digest (Supp.) and see 44 Digest, pp. 45 *et seq.*

(l) *Hesketh v. Birmingham Corpn.*, [1924] 1 K. B. 260; 38 Digest 153, 29.

(m) 13 Statutes 761.

Buildings and Sky Signs.—Sect. 157 of the P.H.A., 1875 (*n*), gives local authorities power to make bye-laws with respect to new buildings, but the buildings of canal companies were not, like the buildings of railway companies, exempted by the terms of the section from the bye-laws made under its provisions. But the model bye-laws issued by the M. of H. exempt buildings (other than dwelling-houses) belonging to statutory undertakers such as canal companies. By sect. 33 of the P.H.A. Amendment Act, 1907 (*o*), a similar exemption extends to any bye-laws as to streets or buildings made under the Act of 1907, or the Act of 1875 as extended by Part II. of the 1907 Act. Under Part IX. of the same Act (*p*) which deals with the licensing of sky signs, any word, letter, model, sign, device or representation relating exclusively to the business of a canal company, and placed wholly upon or over any canal, wharf, quay or quay approach belonging to a canal company, and so placed that it cannot fall into any street or public place is excluded from the meaning of sky sign. [806]

Construction of Works by Local Authorities.—In the construction by local authorities of works which would affect a canal, full protection is afforded to the canal company by sect. 327 of the P.H.A., 1875 (*q*). And as the amending P.H.A. of 1890 and 1907, and Parts I. to VIII. of the P.H.A., 1925, are to be construed with the P.H.A., 1875, as one Act, any protection given by the P.H.A., 1875, extends to works executed by a local authority under the authority of the amending Acts already mentioned. Difficulties are often experienced by local authorities who find it necessary to lay a trunk sewer or water main passing under a canal or along a towing-path.

Under sect. 327 of the Act of 1875, the written consent of the canal company must be obtained, wherever the local authority propose to (i.) interfere with any canal so as to injuriously affect the navigation, or its use, or the traffic on any towing-path, or (ii.) interfere with any water-course in such a manner as to injuriously affect the supply of water to any canal, or (iii.) interfere with any bridges crossing any canal, or (iv.) execute any works in, through or under any wharves, quays, docks, harbours or basins of which a canal company has exclusive use. Nothing in the Act prejudices or affects the rights, privileges or powers of canal companies given or reserved to them in their local Acts for draining, preserving or improving their land (*ibid.*). Where a local authority constructed drains for surface water through and under a towing-path and bank of the river Thames, it was held that as the work would temporarily interfere with the traffic on the towing-path, the authority should have obtained the consent of the Thames Conservators (*r*). In regard to other acts which a local authority intend to do which may interfere with the improvement of any canal or towing-path or the navigation, or the works of a canal company, or with land necessary for its enjoyment or improvement, they must send a notice to the company specifying the particulars of the work intended to be done. If the company does not consent, there shall be decided by arbitration (i.) whether the things proposed to be done will cause an injury to the

(*n*) 13 Statutes 689, extended to rural districts by S.R. & O., 1931, No. 580; 24 Statutes 262.

(*o*) 13 Statutes 923.

(*p*) *Ibid.*, 945. See s. 91 (3) (c); 13 Statutes 946.

(*q*) *Ibid.*, 759.

(*r*) *River Thames Conservators v. Walton-upon-Thames U.D.C.* (1907), 96 L. T. 555; 44 Digest 114, 913.

undertaking, and (ii.) whether any injury caused is of such a nature as to admit of being fully compensated by money (s). If the arbitrators decide that no injury will be caused, the local authority may proceed with the work; if the arbitrators decide that there would be injury and that it can be fully compensated by money, they must assess the compensation, and on payment of the sum the local authority may proceed; if the arbitrators decide that injury will be caused that cannot be fully compensated by money, the local authority must not proceed with the work (a).

By sect. 332 (b) nothing in the Act of 1875 authorises any local authority to injuriously affect any canal or the supply, quality or fall of water contained in any canal or its feeders, where the canal company is entitled by law to prevent or be relieved against such injurious affection, unless the local authority first obtain their consent in writing. The remedy is by an injunction or damages, not by compensation (c). Under sect. 108 of the Housing Act, 1925 (d) notwithstanding anything in these sections (327 or 332), local authorities and county councils may be authorised to abstract water from any river, stream or lake, or the feeders to them, for the purpose of affording a water supply for houses provided under a scheme, but they are not authorised to abstract any water the abstraction of which would, in the opinion of the Minister, injuriously affect the working or management of any canal. [807]

Private Street Works.—Sect. 22 of the Private Street Works Act, 1892 (e), provides that no canal company shall be deemed to be an owner or occupier for the purposes of that Act in respect of any land of the company upon which any street wholly or partially fronts or abuts, and which at the time of the laying out of the street is used by the company solely as a part of their canal or towing-path and has no direct communication with the street. The expenses incurred which, but for this provision, the company would be liable to pay, must be paid by the owners of the premises included in the apportionments, and in such proportion as is settled by the surveyor. If the company subsequently makes a communication into the street they must pay to the authority the expenses which, but for this provision, they would in the first instance have been liable to pay, and the authority must divide among the owners for the time being included in the apportionment the amount so paid, less the expenses of the division, in such proportion as is decided by the surveyor, whose decision is final.

Railway and canal premises are liable to have the expense of works executed under sect. 150 of the P.H.A., 1875, apportioned on them unless the street is carried across the railway or canal by a bridge (f). [808]

Other Savings for Canal Companies.—As regards building and improvement lines (see under that title) savings are made for any property of canal companies used for the purposes of the canal unless they consent both in the Roads Improvement Act, 1925 (g), and the

(s) P.H.A., 1875, s. 323; 13 Statutes 760.

(a) *Ibid.*, s. 329; *ibid.*, 761.

(b) *Ibid.*, s. 332; *ibid.*, 762.

(c) *R. v. Darlington Local Board of Health* (1865), 6 B. & S. 562; 44 Digest 20, 113.

(d) 13 Statutes 1061.

(e) 9 Statutes 204.

(f) See the decision in *Higgins v. Harding* (1872), L. R. 8 Q. B. 7; 26 Digest 494, 2033, in regard to railways and other cases on that page.

(g) S. 5 (8) (b); 9 Statutes 225.

P.H.A., 1925 (*h*). Under the latter Act, sect. 30 (*i*) which enables a local authority which adopts the section to declare a street to be a new street, in order to apply their bye-laws, does not extend to a building, other than a dwelling-house, erected by a canal company and occupied or used for the purposes of the canal.

Sect. 25 of the P.H.A., 1925 (*k*), if adopted, makes it an offence for any person to fix or place any overhead rail, beam, pipe, cable, line or other apparatus over, along or across any street, without the consent of the local authority given in writing, upon such reasonable terms and conditions as the local authority think fit. This section does not, however, apply to any works or apparatus belonging to a canal company. By sect. 11 of the Act of 1925 (*l*), nothing in the Act is to prejudice or affect the powers of any canal company in regard to the culverting or covering in of any watercourse or extend to any culvert or covering of a stream or watercourse used for the purposes of the canal without the consent of the company being obtained by the local authority. By sect. 75 of the same Act (*m*), where local authorities make bye-laws for regulating the conduct of persons waiting in streets to enter public vehicles, they must not obstruct the access to or from any premises belonging to the owners of any canal and used for the purposes of the canal.

By sect. 41 of the Town and Country Planning Act, 1932 (*n*), no provision contained in a scheme shall apply to any land or any building on it which belongs to any canal company or is held or used by them for the purposes of their undertaking, without their consent. Their consent must not be unreasonably withheld, and the M. of H. is to decide whether or not it is unreasonably withheld, but before giving his decision, where any other Government department is concerned with the functions of the company he must consult with the Secretary of State or other Minister in charge of the department, and must give the canal company the opportunity to appear and be heard by one or more persons appointed for the purpose by the Ministers acting jointly. If there is any question as to whether any or which of the Government departments is concerned, the decision lies with the Treasury, and is final.

Special provision as to railway and canal bridges should be noted in the Bridges Act, 1929, sect. 4 (*o*), though the whole Act relates to them generally. (i.) An order made under the Act cannot, without the consent of the canal company, require any bridge owned by a canal company and crossing a canal to be altered or reconstructed in such a manner as to necessitate any alteration in the level, or reduction in the width of the canal, or to reduce the headway of the bridge as existing at the date of the order; (ii.) an order made under the Act requiring the reconstruction of a bridge crossing a canal, or of the approaches to such a bridge, must, unless the owner of the bridge agrees to the contrary, direct the structure of the bridge and the road carried by it and the approaches to be maintained by the highway authority; (iii.) nothing in the Act or any order made under it is to be construed as authorising the stoppage of traffic on any canal without the consent of the owner, and any highway authority carrying out work on the bridge must take any steps necessary to prevent as far as practicable any interference with the traffic. Consent to the temporary stoppage

(*h*) S. 33 (13) (*b*); 13 Statutes 1130.

(*i*) *Ibid.*, 1126.

(*l*) *Ibid.*, 1118.

(*n*) 25 Statutes 511.

(*k*) *Ibid.*, 1123.

(*m*) *Ibid.*, 1150.

(*o*) 9 Statutes 270.

of traffic must not be unreasonably withheld, and any question whether such consent has been unreasonably withheld is determined by the Minister of Transport (*ibid.*). The expenses may be borne (*p*) partly by the owner and partly by the highway authority or authorities concerned or wholly by either, and in default of agreement shall be determined by arbitration. Savings as to canal bridges occur also in the Electricity Acts. By sect. 16 of the Electric Lighting Act, 1882 (*q*), if electricity undertakers have placed any works under, in, upon, over, along or across any canal, and any person, who has the power to do so, constructs docks, basins or other works on any land adjoining or near the canal, but is prevented by the works of the electricity undertakers from forming a communication for the convenient passage of vessels between the dock, basin or other work and the canal, or if the business of the dock, basin or other work is interfered with by the electricity works, the undertakers, where reasonable facilities are afforded them for placing works round the dock or basin, must remove and place their works where more convenient. Any dispute in this matter is to be determined by arbitration (*q*). With regard to way-leaves, by sect. 22 (2) of the Electricity (Supply) Act, 1919, the power of placing electric lines across land conferred by that section, includes the power to place a line across or along any canal, subject to the rights of the owners (*r*). (See also under title ELECTRICITY SUPPLY.) [809]

London.—The Canals Protection (London) Act, 1898 (*s*), provides for the protection of dangerous places on canals in the County of London. Any local authority, which includes the L.C.C. and the metropolitan borough councils, may require a canal company to erect and maintain fences, gates or rails where, in their opinion, the bank or towing-path is so insufficiently protected at any place where it abuts upon the public highway as to involve danger to human life. There is a right of appeal from such requisition to a court of summary jurisdiction; but should the order of the court be not complied with by the canal company within the time limited, the local authority may execute the necessary works and recover the costs from the canal company in manner provided by the Summary Jurisdiction Acts.

The powers conferred by the Bridges Act, 1929 (*t*), on highway authorities with respect to bridges over canals are exercisable, in the case of a bridge in the City of London, by the common council of the city, and elsewhere by the council of the metropolitan borough in which the bridge is situated (*u*). [810]

(*p*) The Bridges Act, 1929, s. 6; 9 Statutes 271.

(*q*) 7 Statutes 694. See also paras. 15 and 19 of the Schedule to the Electric Lighting (Clauses) Act, 1899; 7 Statutes 714, 720, which was applied with a modification to the Central Electricity Board by s. 20 of the Electricity (Supply) Act of 1926; 7 Statutes 806; and S.R. & O., 1927, No. 1144.

(*r*) 7 Statutes 768. The paras. in Schedule to the Electric Lighting (Clauses) Act, given in note (*q*) also apply.

(*s*) 14 Statutes 264.

(*t*) 9 Statutes 268.

(*u*) *Ibid.*, s. 1 (2); *ibid.*

CANALS, RATING OF

See RAILWAYS, RATING OF; RATING OF SPECIAL PROPERTIES.

CANCER

	PAGE		PAGE
DEFINITION - - - -	400	RADIUM AND X-RAYS IN THE	
POWERS AND DUTIES OF LOCAL		TREATMENT OF CANCER - -	402
HEALTH AUTHORITIES - -	400	MEDICAL RESEARCH COUNCIL	
RECOMMENDATIONS TO LOCAL		(SPECIAL REPORT SERIES) - -	403
AUTHORITIES AND COUNTY		CENTRAL MIDWIVES BOARD AND	
COUNCILS - - - -	400	CANCER - - - -	403
REASONS FOR ACTION BY LOCAL		REPORTS ON PUBLIC HEALTH AND	
AUTHORITY - - - -	401	MEDICAL SUBJECTS - -	403
NOTIFICATION OF CANCER - -	401	CIRCULARS AND MEMORANDA -	404
OCCUPATIONAL CANCER - -	402		

See also titles : CLINICS ;
DISEASES ;
HOSPITALS ;
PUBLIC HEALTH.

Definition.—The term “cancer” as used in publications of the central government authority includes all those tumours or abnormal growths of cell tissue which, if left untreated, result in practically all cases in the death of the sufferer. These growths are known as malignant growths in opposition to the benign group of tumours which are not necessarily fatal. [811]

Powers and duties of Local Health Authorities.—There is nothing in the statute law or statutory regulations imposing duties or powers upon local health authorities with specific relation to cancer, but there is a general duty imposed upon M.O.H's. to inform themselves of any conditions which may adversely influence the health of the public (a), and this may properly be held to include a duty to deal with any matters which affect the incidence and mortality of this group of diseases. Further, sect. 64 of the P.H.A., 1925 (b), confers upon local health authorities the power to make subscriptions to hospitals for the furtherance of treatment of disease, and sect. 67 (c) enables a health authority or county council to incur expenditure in the education of the public on questions relating to health or disease. Clearly malignant disease comes within the ambit of such powers. Again, the L.G.A., 1929, under which the poor law hospitals and medical services were transferred to county and county borough councils, makes these authorities responsible for the treatment of malignant disease amongst other illnesses. While, therefore, there is no specific reference to cancer in statute law or statutory regulations there appears to be ample enabling power given to local health authorities and county councils under the general statutory powers and obligations referred to. [812]

Recommendations to Local Authorities and County Councils.—In connection with these general inclusive powers (*ante*), the M. of H. has

(a) Sanitary Officers Order, 1926 (S.R. & O., 1926, No. 552), superseding the Sanitary Officers Order, 1922 (S.R. & O., 1922, No. 276).

(b) 18 Statutes 1143; extended to county councils by L.G.A., 1929, s. 14 (1);

(c) *Ibid.*, 1145.

issued a series of circulars and memoranda directing the attention of local health authorities to the desirability of taking action for the ascertainment of fuller and more exact knowledge in relation to cancer, for the improvement of facilities available for the diagnosis and treatment of cancer and for the education of the public in such matters as will tend to the prevention of this group of diseases and also to more successful treatment when such disease has made its appearance in the individual. These circulars and memoranda are dealt with in more detail in the later sections of this article.

Parallel to these circulars, and contemporaneous with them, the M. of H. has published a series of "Reports on Public Health and Medical Subjects" dealing with the incidence, mortality and treatment of cancer in various parts of the body and with certain general considerations such as the natural duration of the disease, the relationship of cancer to diet, etc. (d). [813]

Reasons for Action by Local Authority.—Apart from the general responsibility of local authorities in all matters affecting health, specific causes have operated in producing this more detailed attention to cancer in recent years. The prime cause is the steady and serious increase in cancer mortality. This increase, since the middle of last century, is fourfold on the crude figures and threefold when corrected for age incidence. The fact that this increase is a real one is well established and need not be discussed here. There is also the fact that few, if any other, groups of diseases give rise to such prolonged suffering and misery, not only in the patients, but in those in contact with the patients. Public interest has been roused and, to some extent, public anxiety has been caused by the increase in cancer, resulting in a demand for public action directed towards its control. Investigation into the cause of cancer has been largely academic and clinical hitherto, but it is increasingly recognised that a wide field of investigation is open primarily to local authorities, and much information may be gathered by such public bodies of very profound value, both academic and practical, in the struggle against these conditions. Lastly, there is both need and demand for public education in matters relating to malignant disease. [814]

Notification of Cancer.—Cancer is not a notifiable disease in this country. Notification of any disease is required either for the purpose of prevention of spread of the disease or for the personal advantages to the patient which it is possible to offer subsequent to notification. The first of these reasons cannot operate in relation to cancer as it is not an infectious condition.

Our knowledge of cancer has not yet reached the stage which would justify compulsory notification. Voluntary notification of certain forms of cancer has been tried in at least one local government area.

While local health authorities have no function in so far as notification of cancer is concerned it is to be observed here that notification of certain forms of cancer is required by the H.O. (Factory and Workshop) Order of November 28, 1919 (e). This Order was made under sect. 73 of the Factory and Workshop Act, 1901 (f), and requires every medical practitioner to notify to the Chief Inspector of Factories at the H.O. any case which he believes to be suffering from :

(d) See *post*, p. 402.
L.G.L. II.—26

(e) S.R. & O., 1919, No. 1775.

(f) 8 Statutes 554.

- (1) epitheliomatous ulceration due to tar, pitch, bitumen, mineral oil, paraffin, or any compound, product or residue of any of these substances ; or
- (2) chrome ulceration due to chromic acid or bichromate of potassium, sodium, or ammonium or any preparation of these substances.

By this order, also, the occupier of a factory or workshop is required to send written notice of any such case to the certifying surgeon and inspector of factories for the district. Recently an extension of the Third Schedule to the Workmen's Compensation Act, 1925, was made to include "a localised new growth of the skin, papillomatous or keratotic, due to mineral oil" (g). This does not mean an extension of the notification above mentioned, but provides for compensation for temporary disablement. [815]

Occupational Cancer.—References to occupational origin of cancer occur occasionally throughout the Ministry's publications, but a special reference should be made to those dealing with cancer of the skin (h).

In Circular 1186 will also be found recommendations as to action by local authorities in connection with certain recognised occupational cancers. Undue exposure to X-rays as a cause of cancer comes within the occupational category. Adequate precautionary measures can now be taken to prevent this risk (i). The League of Nations has also published an advisory brochure on these protective measures (k).

An excellent analysis of the relation between occupation and the incidence of cancer mortality is to be found in a book published for the Medical Research Council by His Majesty's Stationery Office (l). [816]

Radium and X-rays in the Treatment of Cancer.—Official publications on this subject are :

Circular 476. M. of H., March 6, 1924.

Circular 1186. M. of H., July 31, 1930 (Part II of the Memorandum).

Circular 1276. M. of H., April 29, 1932.

Of these much the most important is the last-named circular. The establishment by the Radium Commission of radium centres has in fact given a great stimulus to local health authorities to make arrangements whereby the treatment of cancer by radium in their areas can be assured with the maximum time-use of the radium available in these centres. The advances made in the treatment of cancer by radium make it highly important that all local authorities should avail themselves of the opportunity thus provided.

Numerous references are made to the use of radium and X-rays in the treatment of various sites of cancer in the "Reports on Public Health and Medical Subjects" (m). [817]

(g) See Circular 1186, M. of H., April 30, 1931, and S.R. & O., 1932, No. 314.

(h) Reports on Public Health and Medical Subjects, No. 70. M. of H. "A Report on Cancer of the Skin." By Gretta M. Thomas, M.D. (Appendices 1—5).

(i) See Recommendations of the X-ray and Radium Protection Committee. National Physical Laboratory : Physics Department, 1927, p. 42.

(k) League of Nations. Protective Measures against Dangers resulting from the Use of Radium, Roentgen and Ultra-Violet Rays. By Hermann Wintz, M.D., Ph.D., and Walther Rump, Ph.D., Geneva. III., Health, 1931, III., 9.

(l) Medical Research Council (Special Report Series, No. 99). "An Investigation into the Statistics of Cancer in Different Trades and Professions." By Matthew Young, M.D., and W. T. Russell with the collaboration of John Brownlee, M.D., D.Sc., and E. L. Collis, M.D., 1926.

(m) See *post*, p. 402.

Medical Research Council (Special Report Series).—The following reports have appeared since 1922 and should be consulted as required :

- No. 62. "Medical Uses of Radium. Studies of the Effects of Gamma Rays from a large quantity of Radium." By various authors (H.M.S.O., 1922).
- No. 90. "Medical Uses of Radium. Summary of Reports from Research Centres for 1923" (H.M.S.O., 1924).
- No. 102. "Medical Uses of Radium. Summary of Reports from Research Centres for 1924" (H.M.S.O., 1926).
- No. 112. "Medical Uses of Radium. Summary of Reports from Research Centres for 1925" (H.M.S.O., 1926).
- No. 116. "Medical Uses of Radium. Summary of Reports from Research Centres for 1926" (H.M.S.O., 1927).
- No. 126. "Medical Uses of Radium. Summary of Reports from Research Centres for 1927" (H.M.S.O., 1928).
- No. 144. "Medical Uses of Radium. Summary of Reports from Research Centres for 1928" (H.M.S.O., 1929).
- No. 150. "Medical Uses of Radium. Summary of Reports from Research Centres for 1929" (H.M.S.O., 1930).
- No. 160. "Medical Uses of Radium. Summary of Reports from Research Centres for 1930." (H.M.S.O., 1931). [818]

Central Midwives Board and Cancer.—The Central Midwives Board has issued an instructional note to midwives (*n*), and cancer of the female generative organs is included in the subjects of examination for the certificate of the Board. [819]

Reports on Public Health and Medical Subjects.—The following reports of this series issued by the M. of H. deal with cancer :

- No. 28. "Cancer of the Breast and its Surgical Treatment." A Review of the Literature. By Janet E. Lane-Claypon, M.D., D.Sc., (Lond.), 1924.
- No. 32. "A Further Report on Cancer of the Breast, with Special Reference to its Associated Antecedent Conditions." By Janet E. Lane-Claypon, M.D., D.Sc. (Lond.), 1926.
- No. 33. "A Report on the Natural Duration of Cancer." By Major Greenwood, F.R.C.P., 1926.
- No. 34. "A Report on the Late Results of Operation for Cancer of the Breast." (Leeds), 1926.
- No. 36. "Diet and Cancer with Special Reference to the Incidence of Cancer upon Members of Certain Religious Orders." By S. Monckton Copeman, M.D., F.R.C.P., F.R.S., and Major Greenwood, F.R.C.P., 1926.
- No. 40. "Cancer of the Uterus. A Statistical Inquiry into the Results of Treatment, being an Analysis of the Existing Literature." By Janet E. Lane-Claypon, M.D., D.Sc. (Lond.), 1927.
- No. 46. "Report on Cancer of the Rectum. An Analysis of the Literature with Special Reference to the results of Operation," 1927.
- No. 47. "A Report on the Treatment of Cancer of the Uterus at the Samaritan Free Hospital." By Janet E. Lane-Claypon, M.D., D.Sc. (Lond.), and W. McK. H. McCullagh, D.S.O., M.C., F.R.C.S., 1927.
- No. 51. "Report on the Late Results of Operation for Cancer of the Breast. Being an Analysis of 2,006 cases occurring in the Practice of the General Hospitals of eight County Boroughs of England and Wales during the period 1910-21." By Janet E. Lane-Claypon, M.D., D.Sc. (Lond.), 1928.

(*n*) Central Midwives Board Leaflet on "Cancer of the Womb," drawn up and issued at the request of the Board, June, 1908; Central Midwives Board Leaflet on "Cancer of the Breast," drawn up and issued at the request of the Board, March 16, 1916.

- No. 59. "Report on Cancer of the Lip, Tongue and Skin. An Analysis of the Literature, from a Statistical Standpoint, with Special Reference to the Results of Treatment." By Janet E. Lane-Claypon, M.D., D.Sc. (Lond.), 1930.
- No. 66. "Incurable Cancer. An Investigation of Hospital Patients in Eastern London." By Janet E. Forber (née Lane-Claypon), M.D., D.Sc. (Lond.), 1931.
- No. 70. "A Report on Cancer of the Skin." By Gretta M. Thomas, M.D. An Inquiry undertaken at the instance of the Yorkshire Council of the British Empire Cancer Campaign under the direction of the Faculty of The General Infirmary at Leeds, 1933. [820]

Circulars and Memoranda.—A departmental committee on cancer was appointed by the M. of H. under the chairmanship of Sir George Newman, K.C.B., M.D., F.R.C.P. This departmental committee and its sub-committees have prepared nine memoranda which have been issued as circulars by the M. of H.

The memoranda are largely informative but also contain suggestions to local authorities as to administrative action. A short statement of the contents of each memorandum is subjoined. [821]

Circular 426, M. of H., August 14, 1923.—The memorandum contains a summarised statement on the increase in cancer mortality, sections on the proclivity to cancer, the relationship to chronic irritation, prophylaxis, diagnosis and treatment of cancer. The most important section administratively is Section VIII, which contains suggestions as to action which may be taken by local authorities. In this section emphasis is laid upon the need for propaganda and for improving the facilities for diagnosis and treatment.

Following upon the issue of this memorandum some local health authorities set up local cancer committees which centralised in the district all the cancer work carried on in hospitals, laboratories, etc. Other areas which have taken action have done so through their public health committees. The formation of cancer committees appears to be covered by the provisions of paras. 20 and 21 of this Circular. Such committees should, if possible, be composed of representatives of all bodies—voluntary and official—interested in either the treatment or the prevention of cancer or the scientific investigation of cancer (university, hospital, public health committees, etc.). The aim of this Circular is to increase the efficiency of cancer work in local areas, and such a combination is likely to be the most effective. Financial assistance to such cancer committees may be held to be covered by sect. 64 of the P.H.A., 1925 (o). As to cancer clinics, see further the title CLINICS. [822]

Circular 476, M. of H., March 6, 1924.—This circular deals with the effects of X-rays upon normal and cancerous tissues. Section A deals with the earlier work historically. Section B gives in more detail the later investigations and conclusions, firstly of action upon normal cells and tissues, secondly of action upon the individual cells of malignant and non-malignant new growths and, finally, of the effects of radiational treatment upon cancer as a disease. [823]

Circular 496, M. of H., May 19, 1924.—This circular discusses "the general position at which surgery has arrived" in the treatment of cancer of the breast. The various forms of operation are referred to

in general terms and the final section—Section VI.—discusses the statistical results of operation in relation to the stage of disease at which such treatment was given. [824]

Circular 516, M. of H., July 31, 1924.—The memorandum accompanying this circular is a review of the particular lines upon which experimental cancer research has proceeded in the years precedent to the date of issue. The memorandum is prepared by Dr. J. A. Murray, Director of the Imperial Cancer Research Fund. The memorandum is in itself a very condensed account of the subject. It is divided into two sections :

- (1) The properties of cells already cancerous, and
- (2) The experimental study of the changes by which cells become cancerous. [825]

Circular 716, M. of H., September 16, 1926.—The memorandum is on "Cancer of the Breast" and supplements information contained in Circular 496. The memorandum discusses and summarises the results of special follow-up enquiries in relation to cancer cases which have occurred during the last fifteen years in several of the great cities. This enquiry was conducted by a sub-committee (Medical Officers of Health) of the Departmental Committee. The main results are confirmatory of the importance of early diagnosis and treatment of mammary carcinoma and the fact that approximately 90 per cent. of recoveries may thus be attained. The importance of the dissemination of this knowledge amongst the public is stressed. [826]

Circular 826, M. of H., December 28, 1927.—The memorandum following this circular deals with cancer of the uterus discussing antecedent conditions, diagnosis and treatment, both operative and by radiation. The final section discusses the practical application of this knowledge, laying emphasis upon post-natal care, early recognition of the condition, and, finally, referring to the establishment of special clinics by some authorities in order to facilitate diagnosis as a means whereby early recognition and treatment may be encouraged. [827]

Circular 1136, M. of H., July 31, 1930.—The memorandum is devoted to "Cancer as a subject for the attention of Local Authorities." Administratively this memorandum is of great importance. It indicates fields of investigation open to local authorities and continues by showing the public health provisions under which action may be taken, methods of investigation, appropriate action (both individual and collective) in relation to cancer patients and suggestions as to co-operation with other authorities engaged in similar work. The importance of early treatment, the steps which may be taken to inculcate this upon the public, the investigation of the psychology of the sufferers and other factors which cause delay in application for treatment by them, and the provision of nursing care—whether domiciliary or otherwise—for patients suffering from advanced stages of cancer are specially mentioned as being "matters falling naturally within the province of local authorities." Wider activities on the part of local health authorities in connection with cancer work are specifically indicated in the L.G.A., 1929 (p), and are increased by the formation of the National Radium Trust and Commission. The essential points are the greater hospital provision now under local jurisdiction and the advantage to be

gained in the economical and full use of radium for the treatment of cancer (see *ante*, p. 401). The remainder of this Circular is devoted to the investigation by local health authorities of individual cancer cases with a view to the classification of knowledge with respect to the conditions of cancer patients which may affect their chances of cure or of relief from suffering, and generally to a survey of the local means for controlling the disease. In the two appendices are given a list of official publications dealing with cancer and a model form of "Investigation by Local Authorities of Histories of Patients Suffering from Cancer." [828]

Circular 1186, M. of H., April 30, 1931.—This circular and memorandum deals with cancer of the lip, tongue and skin, and completes, with the precedent publications on cancer of the breast and uterus, the official statements on the "accessible" cancers. The memorandum mainly deals with antecedent conditions and the preventive measures which can be taken to deal with the environmental causes of the antecedent conditions. Special reference is made to skin cancers due to oils, tars and X-rays, and the action possible to local authorities from our knowledge of these predisposing causes.

The first four sections of this memorandum provide a summary of modern information on these cancers. Sect. 5 gives the practical application of this knowledge to the work of the local health authorities. All detailed information is given in this section, and here it need only be mentioned that the attention of the local authority is directed especially to public education, the early medical treatment of chronic ulcerations, the importance of personal hygiene so that local chronic irritations may be avoided, personal habits which eliminate some of the risks leading to irritations and ulcerations of the mouth, lip and skin, and, in particular, the control of the risks associated in industry with the use of oils and tars and the practising physician's risk in the continued use of X-rays. Special emphasis is laid upon the importance of early surgical or other treatment of the lesions arising from known pre-disposing causes, inasmuch as such early removal can be effected before the pre-cancerous stage of the condition has passed, *i.e.* before malignancy has been established. In this way the risk attached to the graver condition may definitely be eliminated. [829]

Circular 1276, M. of H., April 29, 1932.—In this circular information is conveyed as to the establishment of the national radium centres throughout England and Wales by the Radium Commission. It deals generally with the organisation governing the use of radium and recommends to the local authorities arrangements whereby treatment of cancers by radium should be made. The latter portion of the memorandum refers to other agencies which, in their complete application, tend to eliminate the antecedent causes of cancer in various organs. The agencies specially referred to are the maternity and child welfare, venereal diseases, and tuberculosis schemes. [830]

CANDIDATE

See ELECTIONS.

CANNED FOOD

See ADULTERATION OF FOOD.

CAPITAL ASSETS

See BORROWING.

CAPITAL EXPENDITURE

See BOROUGH ACCOUNTS; COUNTY ACCOUNTS; RURAL DISTRICT COUNCIL ACCOUNTS; URBAN DISTRICT COUNCIL ACCOUNTS.

CAPITAL EXPENDITURE OUT OF INCOME

	PAGE		PAGE
INTRODUCTORY NOTE	- 407	SANCTION	- 409
ADVANTAGES	- 408	ELECTRICITY UNDERTAKINGS	- 409
TRADING UNDERTAKINGS	- 409	CONCLUSIONS	- 410

See also title : FINANCE.

Introductory Note.—All expenditure of a local authority, whether capital or revenue expenditure, must eventually be met from income, for a local authority has no power to raise money by means of the issue of shares or other irredeemable securities.

The borrowing of money by local authorities is either directly authorised by a local Act or statutory order allowing them to borrow a specified sum for specified purposes, or by a sanction issued by a Government department under the authority of a public general or local Act or statutory order. In both instances, the enactment or

sanction will specify a period of years within which the loan must be repaid. It will be seen, therefore, that all expenditure on the part of a local council which is met out of loans is in fact deferred revenue expenditure. On the other hand, capital raised by a company by an issue of shares is in effect irredeemable. If, however, a company should raise money by an issue of debentures, which must be redeemed on the termination of a period of years by means of a sinking fund formed from profits, the position would resemble that of a local authority raising a loan to meet capital expenditure. The term capital expenditure is applied to money used for purposes in respect of which a loan is or could be raised and capital expenditure out of income is capital expenditure which is, in fact, defrayed from the income of the year in which the expenditure is incurred. [831]

The question whether an existing borrowing power should be exercised by a local authority rests with the authority alone. This was clearly recognised by the Select Committee of 1902 on the Repayment of Loans, the representative of the Local Government Board agreeing that there was nothing in any Act of Parliament to prevent the rating authority paying off capital to any extent out of the current rate (question 226). There is no compulsion placed on the authority to borrow merely because borrowing powers are available. The position may be said to have received statutory authority in sects. 183, 186 and 189 of the L.G.A., 1933, which authorise councils to levy rates to meet all liabilities falling to be discharged by them for which provision is not otherwise made. [832]

Advantages.—The chief advantage to be derived from a policy of defraying capital expenditure from revenue is the economy secured by the avoidance of a charge for interest. If the period of the loan is prolonged, the total cost to the ratepayers of the work for which the loan was raised is enormously increased. Thus, on a loan of £1,000 for 40 years at $3\frac{1}{2}$ per cent., the total interest payable will be as much as £1,400, increasing the cost of the work by 140 per cent. It must be appreciated, however, that this advantage is obtained by imposing on the ratepayers of the financial year or years in which the work was executed the liability to meet the total cost of the work. The council are consequently called upon to decide whether it is in the interests of their ratepayers to defray the expenditure over a period of years or whether those interests are best secured by an immediate discharge of the outlay.

The answer to this question depends to some extent upon the rate resources of the authority and also whether the expenditure relates to a trading undertaking or a rate service. It is clear that the council of a large county or borough might regard expenditure as an automatic revenue charge, which if incurred by a small U. or R.D.C., must inevitably be defrayed from loans. [833]

The question of defraying capital expenditure out of income will not generally arise where large capital expenditure is being considered, but the matter becomes of real importance when the expenditure is of a recurring character. Many councils find it necessary to undertake such works as street improvements, sewer extensions, surface water drainage and the like more or less continuously, and while the amount spent each year will be found to vary considerably, the average of any given period of years will usually work out at a fairly constant level. In such cases

it is doubtful whether any good purpose is served by borrowing the money required, since if this course is adopted the time arrives when the loan charges for interest and repayment of principal in respect of the various loans amount to a sum equal to the normal annual capital expenditure.

Any decision on this matter in consequence should be taken only after mature consideration of all the circumstances involved. The council should consider such points as whether the immediate payment would place an undue burden upon the ratepayers of that period and cause a serious variation in the rate poundage; whether the expenditure is of immediate advantage or whether such advantage will be largely deferred. Thus the provision of a fleet of motor vehicles for refuse collection could be considered of immediate advantage, while the construction of a trunk sewer in a sparsely populated but growing locality could be regarded as expenditure in respect of which the benefits are to a considerable extent deferred. Again it is necessary to consider whether the expenditure is special or whether it is likely to be repeated at frequent intervals, for as mentioned earlier, expenditure of a capital nature which is more or less constant in each year can advantageously be defrayed directly from revenue. [834]

Trading Undertakings.—One important feature distinguishes the consideration of the policy in its application to a trading undertaking of a local authority from its application to a rate fund service. Capital expenditure for a trading service is usually incurred with a view to developing the service, providing greater efficiency or cheapening the cost of production. Thus, the enlargement of a power station or the provision of a trunk main may be intended to meet an increased future demand, while new machinery may be provided to increase efficiency and to reduce the cost of production. In such cases it is not unreasonable to consider that the cost of these improvements should be charged against the additional profits or revenue which are anticipated. Another reason for regarding capital expenditure of a trading undertaking on a different basis from rate fund expenditure is the effect which such expenditure may have upon the costs of production. A small increase in the price of a commodity such as gas, electricity or water may seriously affect large consumers, and it is generally against the interest of the undertaking for these charges to be higher than is absolutely necessary. [835]

Sanction.—It has been mentioned that there is no compulsion on local authorities to borrow money for capital purposes, but where the account or fund is grant-aided, it will generally be found necessary to obtain the consent of the appropriate Government department to charging the expenditure to revenue, as otherwise it may not be allowed to rank for grant. In particular this applies to education and police services. It will usually be found, however, that if an application is made on good grounds, the expenditure will be approved. [836]

Electricity Undertakings.—So far as an electricity undertaking is concerned the position is affected, somewhat indirectly, by sect. 43 and the Fifth Schedule to the Electricity (Supply) Act, 1926, which amended sect. 7 of the schedule to the Electric Lighting (Clauses) Act, 1899 (a), and restricted transfers to rates from the profits of an electricity

(a) For this section as amended by the Act of 1926, see 7 Statutes 709.

undertaking. Before such a transfer is made it is necessary for the reserve fund to amount to at least one-twentieth of the aggregate capital expenditure on the undertaking, and even when the reserve fund reaches the amount the transfer is limited to $1\frac{1}{2}$ per cent. of the outstanding debt of the undertaking. It will thus be seen that if the policy of capital expenditure from income is in general operation in connection with an electricity undertaking, the tendency will be for the outstanding loan debt to diminish, and the right to utilise any surplus arising on the undertaking in the relief of local rates will be correspondingly reduced. The advantage or otherwise of the policy of transferring profits from trading undertakings to the relief of rates is not being here considered, but it is important that the effect of the policy of defraying capital expenditure from income in connection with an electricity undertaking should be appreciated. [837]

Conclusions.—Where a local authority contemplates adopting the principle of financing capital expenditure out of revenue, there are difficulties of a transitional nature to be borne in mind. If the earlier practice has been to borrow in all cases where borrowing powers are available, there will be at the outset a double charge to revenue, in respect of loan charges on existing capital expenditure, and in respect of the payment from revenue of current capital commitments. It would probably be advantageous, therefore, to adopt the system at a time when there is a prospect of a reduction in rates or when fairly substantial loan charges are falling in. The scheme could then be put into operation gradually by earmarking some comparatively small portion of the rate for this purpose, which can be increased as loan charges fall in. It may be mentioned that a number of local authorities have in recent years obtained power in their local Acts to establish a fund to be credited with the proceeds of a rate up to a specific maximum, and miscellaneous capital receipts, which may be applied in financing capital expenditure (see *ante*, p. 221).

Special powers, although useful, are not, however, required to enable an authority to meet capital expenditure from the rates, as already indicated, and many authorities, recognising the financial unsoundness of persistent borrowing, meet substantial amounts of capital expenditure directly from the rates. A notable example is the L.C.C. who initiated this reform in 1929 and up to 31st March, 1934, had met capital expenditure by direct charges on the rates to the extent of £2,715,000. At the same time the council decided that all isolated items of capital expenditure, *i.e.* not forming part of a larger scheme, not in excess of £5,000, should be met out of the rates. The saving in interest to the London ratepayers by the adoption of this policy has been considerable.

In conclusion, it may be said that a local authority are justified in borrowing for the construction of works, or for the purchase of land or any other asset, costing a considerable sum, as compared with the resources of the authority. At the same time a prudent financial policy requires capital expenditure of comparatively small amount, or of a constantly recurring nature, to be defrayed from revenue. Such a policy would not necessarily involve an increase in the rate (although an increase might often be justified), particularly if the expedient is adopted of making special contributions to sinking funds, or to contingency or reserve funds, in years during which the capital expenditure defrayed is small. [838]

CARAVANS

See TENTS, SHEDS AND VANS.

CARBIDE OF CALCIUM

					PAGE						PAGE
APPLICATION OF PETROLEUM ACT -					411	CARBIDE OF CALCIUM IN LIGHT-					
						HOUSES -					412
QUANTITY KEPT WITHOUT A						CARBIDE OF CALCIUM IN SEWERS -					412
LICENCE	-	-	-	-	411	LONDON -					412

See also titles: EXPLOSIVES ;
PETROLEUM.

Application of Petroleum Act.—Carbide of calcium, a compound of importance as a source of acetylene, is one of the substances to which the provisions of the Petroleum (Consolidation) Act, 1928 (*a*) have, with modifications, been applied by an Order in Council made under sect. 19 of the Act. The general law on the subject is therefore dealt with under the title PETROLEUM, but the Order made in 1919 (*b*), applies to carbide of calcium alone.

This order, dated November 5, 1929, revokes all previous orders relating to the keeping of carbide of calcium, and makes the whole Act apply, except so much as relates to the conveyance of petroleum spirit by road, to the testing of petroleum spirit, to the keeping and use of petroleum spirit for the purposes of motor vehicles, motor boats, aircraft and engines, and to bye-laws as to petroleum-filling stations. The label required by sect. 5 of the Act is to bear the words "Carbide of Calcium"; "Dangerous if not kept dry"; "The contents of this package are liable, if brought into contact with moisture, to give off a highly inflammable gas," instead of the words "Petroleum spirit"; "Highly inflammable." [839]

Quantity kept without a Licence.—In substitution for the provisions given in paragraphs (a) and (b) of the proviso to sect. 1 (1) of the Act, the order authorises the keeping without a licence of (i) 5 lbs. of carbide of calcium, where it is kept in separate hermetically closed metal vessels containing not more than 1 lb. each; and (ii) 28 lbs. where certain prescribed conditions are observed. These conditions are (a) the carbide shall be kept only in a metal vessel or vessels hermetically closed at all times when the carbide is not actually being placed in or withdrawn from such vessel or vessels; (b) the vessels containing carbide shall be kept in a dry and well ventilated place; (c) due precautions shall be taken to prevent unauthorised persons from having access to the carbide; and (d) notice shall be given of such keeping to the local

(a) 13 Statutes 1170.

(b) The Petroleum (Carbide of Calcium) Order, 1929 (S.R. & O., 1929, No. 992).

authority. Where a fixed generator is used on the premises there is added that (e) full and detailed instructions to be supplied by the maker as to the care and use of the generator, shall be kept constantly posted up in such place as may be conveniently referred to by the generator attendant. [840]

Carbide of Calcium in Lighthouses.—Where carbide is kept by a general lighthouse authority (c) such quantity may be kept as may be required for the purposes of such authority, under the same conditions (a) and (c) above. The vessels containing the carbide must be kept in a dry and well-ventilated building, exclusively appropriated to the keeping of carbide and detached from a dwelling-house or separated therefrom by a substantial partition with no opening in it. In place of (d) it is provided that “no artificial light capable of igniting inflammable vapour is allowed to be taken into the building in which the carbide is kept.” [841]

Carbide of Calcium in Sewers.—By sect. 41 (1) of the P.H.A., 1925 (d), any person who wilfully or negligently empties, turns or permits to enter carbide of calcium into any sewer or drain communicating with a sewer is liable to a penalty up to ten pounds and five pounds a day for a continuing offence. [842]

London.—The Order of 1929 applies to London and the L.C.C., and the common council of the city are the local authorities thereunder. [843]

(c) Merchant Shipping Act, 1894, s. 634; 18 Statutes 379.

(d) 13 Statutes 1183. See also title SEWERS AND DRAINS.

CARE AND PROTECTION OF CHILDREN AND YOUNG PERSONS

	PAGE		PAGE
MEANING OF “IN NEED OF CARE	412	POWERS OF OTHER COURTS	414
OR PROTECTION” — — —	412	DATE OF OPERATION — — —	415
DUTY OF LOCAL AUTHORITY —	413	LONDON — — — — —	415
POWERS OF THE JUVENILE COURT	414		

See also titles :

APPROVED SCHOOLS ;

FIT PERSON ;

INFANT LIFE PROTECTION ;

INFANTS, CHILDREN AND YOUNG
PERSONS ;
JUVENILE OFFENDERS ;
REFRACTORY CHILDREN ;
REMAND HOMES.

Meaning of “In Need of Care or Protection.”—The Children and Young Persons Act, 1933, which consolidated most of the provisions of the Children Act, 1908 (a) and the Children and Young Persons Act, 1932 (b), makes provision for dealing in the juvenile court with children and young persons, including those under the age of seventeen years, who are in need of care or protection. Sect. 61 (c) defines three classes of children and young persons who are to be considered in need of care or protection, viz. :

(a) 9 Statutes 795.

(c) 26 Statutes 207.

(b) 25 Statutes 209.

- (i.) Those who having no parent or guardian, or an unfit parent or guardian, or a parent or guardian who is not exercising proper care or guardianship, are either falling into bad associations or exposed to moral danger or beyond control. The section adds that without prejudice to the general meaning of these provisions, it shall be evidence of moral danger if a child or young person is found destitute, or wandering without settled abode or visible means of subsistence, or begging or receiving alms, or loitering for the purpose of begging or receiving alms. [844]
- (ii.) Those against whom certain offences mentioned in the First Schedule to the Act (*d*) have been committed, or who are members of the same household as a child or young person against whom such an offence has been committed, or who are members of the same household as a person who has been convicted of such an offence against a child or a young person, or who are female members of a household whereof a member has committed an offence of incest against another female member, and who, in all these cases, require care or protection. [845]
- (iii.) Children (liable to attend school) in respect of whom an offence has been committed under sect. 10 (*e*), which deals with persons who habitually wander from place to place and thus prevent children from receiving education. [846]

It will be observed that under (i.) and (iii.) it is not necessary to prove that the child or young person requires care or protection; upon proof of the facts which bring the case within those paragraphs the definition of "in need of care or protection" is satisfied. But in cases coming under (ii) it is necessary to prove affirmatively, and in addition to the proof of the offence, that the child or young person requires care or protection. [847]

Duty of Local Authority.—The local authority (*f*) is charged with the duty of bringing before a juvenile court (*g*) any child or young per-

(*d*) 26 Statutes 241. These offences are as follows: murder or manslaughter of a child or young person; infanticide; abandonment or exposure of a child under two so as to endanger its life or health; taking away or detaining a child, with intent to deprive a person having the lawful care or charge of such child or receiving or harbouring a child with such intent knowing it to have been so taken away or detained; assault on a child or young person; aggravated assault on a child or female young person; indecent assault on a child or young person; attempt to commit buggery or assault with intent to commit buggery on a child or young person; procurement of a child or young person; carnal knowledge of a girl under sixteen or carnal knowledge of an imbecile under seventeen; the permitting by a householder of carnal knowledge of a girl under sixteen on his premises; abduction of an unmarried girl (child or young person); detention of a female child or young person with intent to have carnal knowledge, or in a brothel; committing or procuring commission of act of gross indecency between males (when a child or young person is concerned); incest, in respect of a child or young person, by a male or by a female of or over sixteen years of age; cruelty to a person under sixteen; causing or encouraging seduction or prostitution of a girl under sixteen; allowing a person under sixteen to be in a brothel; causing or allowing a person under sixteen to be used for begging; exposing a child under seven to risk of burning; causing, procuring or allowing a person under sixteen to take part in a dangerous performance; any other offence involving bodily injury to a child or young person.

(*e*) 26 Statutes 177.

(*f*) Generally, this is, in the case of children under fourteen, the local education authority for elementary education, and in the case of young persons, the county or county borough council (s. 96; 26 Statutes 232).

(*g*) As to method of bringing a case before the court, see the Summary Jurisdiction (Children and Young Persons) Rules, 1933 (S.R. & O., 1933, No. 819).

son residing or found in its district who appears to be in need of care or protection, unless it is satisfied that this course is undesirable in his interests or that proceedings are being taken by some other person (*h*). Only a local authority, a constable, or an authorised person (which means an officer of a society which is authorised by general or special order of the Secretary of State or a person who is himself so authorised) may bring this class of case before a juvenile court. A local authority may appear by their clerk or other duly authorised officer (*i*).

By sect. 96 (8) of the Act (*h*) a local authority or committee may delegate their power to the clerk or the chief education officer to institute proceedings in a case which seems to him to be urgent.

In all cases where the local authority is not itself instituting the proceedings, the person who is bringing the child or young person before the court must notify the local authority concerned of the time of the hearing of the case and the grounds upon which the case is being brought. The local authority to be so notified is the authority for the district in which the child or young person is resident, or, if his residence is not known, the authority for any district in which the circumstances justifying the application to the court are alleged to have arisen (*l*).

Whether the local authority itself undertakes the proceedings or receives a notification that some other person is taking proceedings, the local authority is under an obligation to make investigations and render available to the court the result of its inquiries on such matters as the home surroundings, character, environment, health and school record of the child or young person, and, in suitable cases, as to available approved schools (*m*). But these investigations so far as home surroundings are concerned need not be made by the authority in any petty sessional division in which arrangements have been made for such investigations to be made by a probation officer (*n*). [848]

Powers of the Juvenile Court.—If the juvenile court be satisfied that the ground of the application is made out, it can deal with the child or young person in four ways. It may order him to be sent to an approved school (*o*); commit him to the care of a fit person, whether a relative or not, who is willing to undertake the care of him (*p*); order his parent or guardian to enter into a recognisance to exercise proper care and guardianship; or make a supervision order, placing him for not more than three years under the supervision of a probation officer or other suitable person. The order of supervision may be made either without any other order or in addition to a committal to the care of a fit person or an order requiring a recognisance (*q*). Such an order corresponds closely to a probation order in the case of an offender, and carries very similar liabilities and consequences. [849]

Powers of Other Courts.—In certain circumstances, courts other than juvenile courts may deal with a child or young person who is in need of care or protection.

Any court before which a person is convicted of any offence mentioned in the First Schedule (*r*) to the Children and Young Persons Act,

(*h*) Children and Young Persons Act, 1933, s. 62 (2); 26 Statutes 208.

(*i*) *Ibid.*, s. 98 (2); repealed except as to London by L.G.A., 1933, and repealed by s. 277, thereof; *ibid.*, 452. (*h*) *Ibid.*, 233.

(*l*) *Ibid.*, s. 35 (1); *ibid.*, 194. (*m*) *Ibid.*, s. 35 (2); *ibid.*, 195. (*n*) *Ibid.*

(*o*) See title "APPROVED SCHOOLS."

(*p*) See title "FIT PERSON."

(*q*) Children and Young Persons Act, 1933, s. 62 (1); 26 Statutes 208.

(*r*) *Ibid.*, 241.

1933, or of an offence under sect. 10 (s) of that Act (which refers to vagrants preventing children from receiving education), may, if it considers that it is in possession of sufficient material to deal with the case, make any order which a juvenile court might make in the case of a child or young person in need of care or protection; or such a court may, if it think proper, direct that the child or young person shall be taken before a juvenile court in order that the juvenile court may deal with him as a child or young person in need of care or protection. In the latter case it is the duty of the local authority in whose area the child or young person was residing or was found to bring him before the juvenile court (t).

The local authority itself is deemed to be a "fit person" for the purposes of orders committing children and young persons to their care (u).

Orders may also be made, in certain cases, committing to the care of the Minister of Pensions or a person appointed by him a child or young person coming within the provisions of the War Pensions (Administrative Provisions) Act, 1918 (a). Under that Act the Minister has a duty to provide for the care of children of men who have died through service in the Great War or who are on active service, if through the death of their mothers or for other reason they are suffering from neglect or want of care. This applies to legitimate and illegitimate children, so long as they are children to, or in respect of, whom a pension, allowance or separation allowance is payable.

Date of Operation.—The provisions of the Act of 1933 dealt with in this title came into operation on November 1, 1933, as the result of an order made by the Home Secretary (b) bringing into operation the whole of the Children and Young Persons Act, 1932, except sect. 51 of that Act. Under sect. 109 (2) of the Act of 1933 (c), this order has the effect of bringing the Act of 1933 into operation. [850]

London.—The Act of 1933 is equally applicable to London and many of its provisions are in fact based upon the practice of the L.C.C. As respects children the L.C.C. are the local authority (see sect. 96 of the Act), but as respects young persons, street trading and employment, the common council are the authority for the City of London (sect. 97), and by the same section the licensing of children for entertainments is performed by the L.C.C. [851]

(s) 26 Statutes 177.

(t) Children and Young Persons Act, 1933, s. 63; 26 Statutes 209.

(u) *Ibid.*, s. 76 (1); *ibid.*, 215. And see title "FIT PERSON."

(a) *Ibid.*, s. 76 (2); *ibid.*

(b) Children and Young Persons Act, 1932 (Date of Commencement) Order, 1933 (S.R. & O., 1933, No. 663).

(c) 26 Statutes 241.

CARRIAGEWAY

See ROADS CLASSIFICATION.

CASE-PAPER SYSTEM

	PAGE		PAGE
PRELIMINARY OBSERVATIONS -	416	RELATION TO PUBLIC HEALTH	
RECORDS OF RECIPIENTS OF POOR		AND OTHER DEPARTMENTS -	421
LAW RELIEF -	417	(1) Treatment of Tuberculosis -	421
(1) Record of the Decisions of		(2) Orthopaedic Scheme -	422
the Committee -	417	(3) Maternity and Child Welfare	
(2) Record of Circumstances -	418	Scheme -	422
(3) Particulars on Later Investi-		(4) School Medical Service -	422
gations -	419	(5) Mental Defectives -	422
(4) Statement as to Liable Rela-		(6) Necessitous and Unemploy-	
tives -	419	able Blind -	422
(5) Settlement -	419	(7) Educational Grants -	422
CENTRAL INDEX OF PUBLIC		(8) Provision of Meals for	
ASSISTANCE -	419	Children -	422
CENTRAL ORGANISATION AND		LONDON -	423
CONTROL -	420		

See also title: PUBLIC ASSISTANCE.

Preliminary Observations.—The Case-paper System as it is known in local government is primarily concerned with the recording of particulars of persons in receipt of poor law relief. The system was first made compulsory by an Order of the Local Government Board issued in 1910. Prior to that date experience had shown that one of the most useful means of enabling a board of guardians to ascertain and co-ordinate the circumstances and the needs of applicants for relief was by the case-paper system. Until case-papers were introduced, no continuous record was kept of an applicant and his family. On every application, his name was entered afresh in the appropriate book kept by the relieving officer, and where this book was not properly indexed it depended entirely upon the memory of the relieving officer as to how much of the applicant's past history was reported to the guardians. When a fresh relieving officer was appointed the cases were new to him, and unless he went through the various books of record he had no means of ascertaining the previous history of an applicant. Under the case-paper system every application is recorded on the same set of papers, which therefore constitute a continuous record of the case. Every set of case-papers is indexed and can be readily referred to by any one dealing with the case. To whatever institution the applicant may go his history can be sent with him.

The advantages to be derived from the use of the case-paper system are obvious. It is the best means of securing that a relief committee has all the necessary information relating to an applicant before deciding on his case. When the applicant next comes before them the system ensures that the same detailed information will be laid before the committee, thus enabling them to deal with the case on consistent lines. In this way thorough investigation and uniformity of practice

may be secured while the officers who collect the information contained in the case-papers are encouraged to perform their work efficiently.

Although the case-paper system is primarily concerned with poor law relief it may be usefully extended to cover not only other forms of public assistance but assistance granted by voluntary bodies. [852]

Records of Recipients of Poor Law Relief.—In every case in which an application is made for relief particulars of the case must be recorded in a case-paper (a). The case-paper consists of a series of forms which must be filled up by the relieving officer or a case-paper clerk. As the relieving officer is the officer of the council who is responsible for investigating all applications for relief, the necessary information required on the case-paper must be obtained by him in the course of his investigations. It is usual, therefore, for the case-paper to be compiled either by the relieving officer personally, or by an assistant in his office. In some districts, however, it is customary for special case-paper clerks to be employed for this purpose. Where such a practice is in operation the documents will be prepared from the rough notes supplied by the relieving officer, but the relieving officer must satisfy himself that the records are complete after they have been made. The case-paper documents must contain all available information relating to the case, and Art. 16 of the Relief Regulation Order, 1930, requires that information shall be given in the case-papers as to the :

- (a) name, age, address and condition as to marriage of—
 - (i.) applicant,
 - (ii.) members of applicant's family resident with him and dependent on him for support,
 - (iii.) relatives liable to contribute ;
- (b) date, nature and cause of application ;
- (c) particulars as to home of applicant ;
- (d) length of applicant's residence in the area ;
- (e) occupation, earnings and other income of—
 - (i.) applicant,
 - (ii.) members of applicant's family and relatives residing with applicant,
 - (iii.) other relatives liable to contribute. [853]

The precise form in which case-paper records shall be prepared is in the discretion of each authority. It is clearly desirable that care should be taken to keep together all the records relating to one family. A convenient set of case-papers should contain the following forms :

(1) *Record of the Decisions of the Committee.*—This form should contain the name and address of the applicant. Columns should be provided to show consecutively the dates on which various applications are submitted by that individual, the nature of the application and how dealt with by the relieving officer, and the orders made by the relief committee on such application. The record should show whether outdoor relief is ordered by the committee in money or in kind, or whether institutional relief is ordered or some other action taken. The period of the order should be entered, and the record should be initialled by the chairman of the relief committee, or an appropriate officer other than the relieving officer.

(a) See Art. 16 of the Relief Regulation Order, 1930 (S.R. & O., 1930, No. 186) ; 12 Statutes 1093.

This form therefore gives a complete record of all applications received from the applicant. If relief is granted and the person subsequently ceases to be chargeable, the same form will be used again on a later application from the same applicant, and a glance will show what action was taken previously. [854]

(2) *Record of Circumstances*.—This form should show the name of the applicant and his wife and of all children, both under and over sixteen years of age, if residing at home. The religious persuasion of the applicant should be stated, as this information will be necessary if the applicant or any member of his family is admitted to an institution. For record purposes it is also desirable to state the age and occupation of each person enumerated on the form. Space should be provided for information as to the name and address of the employer of any member of the family with a note of the average weekly earnings, or the weekly earnings for a given period.

Information should also be given as to the weekly expenditure of the applicant in regard to rent or lodgings, club subscriptions, insurance premiums and any other recurrent weekly expenditure of a similar nature. It is also usual to note the arrears (if any) of rent or lodgings, the amount of other debts and the amount and nature of savings.

In addition to the earnings, information should be given as to any other sources of income, such as national health insurance or disablement benefit; sickness or unemployment benefit; benefit from sick clubs or trade unions or other similar organisations; army reserve pay or receipts from charities. Another item of income to be recorded is the amount paid by lodgers, or relatives. Any other source of income should also be entered. From this information the total weekly income of the applicant from all sources is readily disclosed and will be available to the relief committee when determining the application.

It is also useful to record on this form information as to the applicant's house, such as the general sanitary condition of the house, the number of rooms in the house, and the number of rooms sub-let. If the applicant is married, the date and place of the marriage should be given. If the application is made by a married woman living apart from her husband, information should be given as to the cause of his absence and as to the date of the last payment made by him towards her maintenance. This information is important to enable the Public Assistance Authority to decide whether proceedings ought to be taken against the husband, either for a maintenance order (b) or under the Vagrancy Act, 1824, ss. 3, 4 (c), either for running away and leaving his wife chargeable, or neglecting to maintain his wife. Where the application is made on behalf of a child apart from its parents, information should be given on this form to show whether the child is an orphan or deserted child, and whether legitimate or illegitimate; the name or names of the parents; occupation of parents, if living; date and place of parents' death, if dead. Information should be given as to the person's poor law settlement. Unless it is clear that the applicant has a settlement in a particular county or county borough it is desirable that a separate form of settlement particulars should be filled in.

It is customary for the record of circumstances to contain information as to liable relatives, but it is preferable that particulars of all liable relatives should be shown on a separate form.

It is desirable, further, that the name and address of the nearest

relative or friend to whom there should be sent a notice in case of illness should be stated.

This form should be signed by the relieving officer. [855]

(3) *Particulars on Later Investigations.*—When a later investigation discloses a change of circumstances, a separate form should be filled in to show the weekly expenditure and sources of income at the date of the subsequent application.

It is useful also that this form should contain a recommendation by the relieving officer together with his observations on the application generally. [856]

(4) *Statement as to Liable Relatives.*—It is suggested that this form should contain particulars as to all relatives who are legally liable to contribute towards the applicant's maintenance. The form should indicate the name and address of the relative, particulars of his family resident with him, relationship, age, occupation (if employed) and with whom employed, weekly earnings and other sources of income, rent and particulars of any special weekly payments. This information will enable the relief committee, or other appropriate committee of the council, to determine as to what contribution any relative should be called upon to make towards the cost of maintenance. The form would also indicate whether a justices' order was obtained or whether the person agreed to make the payment voluntarily. [857]

(5) *Settlement.*—This form should be used in any cases where the applicant is not clearly settled in or irremovable from the county or county borough in which he is residing when applying for relief. In order that a person's settlement may be readily ascertained this form should show the present and previous residences of the applicant in order of date back to the last period of residence which gave a settlement by residence. Particulars should be given of any break of residence caused by the receipt of relief, or other excluded periods. In appropriate cases, particulars of apprenticeship should be given. If the applicant has no settlement, other than by birth, particulars of any settlement which may have been derived from a parent or husband should also be stated.

It should be understood that the forms above indicated are not prescribed by any statute or order of the Minister of Health and, subject to the requirement in Art. 16 of the Relief Regulation Order, 1930, already referred to, that case-papers should contain certain information, the form of the records is in the discretion of the council. The forms suggested have, however, as the result of experience, proved to be of value. [858]

Central Index of Public Assistance.—Under most of the administrative schemes made under the L.G.A., 1929, s. 4 (d), the public assistance committee of a county or county borough is required to establish a central index of public assistance.

In adapting its administrative machinery to deal with public assistance, on the transfer from boards of guardians, the council must have considered the necessity of co-ordinating public assistance, and as to how far it was essential or desirable to provide a central register or index from which each of its committees can ascertain how far the circumstances of persons with whom they are dealing are known to other branches of the council's administration.

Certain forms of public assistance are of a discretionary character and depend on the total income of the recipients not reaching a specified limit. All forms of public assistance are therefore closely related, not only to each other, but also to voluntary charities. In some parts of the country there has been for some years a system of registration on a voluntary basis of persons who are being assisted from public funds as well as from charitable sources. In such a register information would be given as to State assistance, such as war or old age pensions, assistance from the local authority in outdoor relief or grants from other departments, such as the education committee, and also assistance from charities or other voluntary sources. Where this system has been adopted, statutory bodies and voluntary charities have appreciated the value of registration, both in the prevention of overlapping and for the value of the co-operation made possible between them.

It has been suggested that a card index should be kept at the town hall of each municipal borough and at the office of each urban and rural district council, and that every public or *quasi*-public authority giving any form of assistance should supply a complete list of the recipients with their addresses and the sums of money or value of the goods received. This arrangement, however, can only be carried out on voluntary lines. The desirability of co-ordination by the establishment of such an index of public assistance is clear when it is remembered that, in addition to being assisted from charitable funds, a household in receipt of outdoor relief from the public assistance authority may also receive free or cheap milk from the maternity and child welfare committee, free meals for children of school age from the local education authority, old age pensions, war pensions, nourishment or general assistance in the home through the tuberculosis care committee, unemployment insurance benefit or allowances from the employment exchange, and sickness, disablement or maternity benefit from an approved society or insurance committee. [859]

Central Organisation and Control.—There must be some measure of central organisation and control if a case-paper system is to be of the maximum efficiency.

In so far as the documents relate to applicants for poor law relief, the administrative arrangements must be such that the case-papers are available to the relieving officer when receiving subsequent applications from the same person, and are also available to the committee when dealing with applications. An efficient case-paper system also enables the central public assistance department of the council to exercise supervision over the granting of outdoor relief by the various committees and sub-committees of the council. There is no uniformity of practice throughout the country with regard to the custody of case-papers. The practice must necessarily vary to a certain extent in accordance with the peculiar circumstances of each locality, and in particular must vary in counties and county boroughs.

In some counties the relieving officers have the custody of the case-papers. It is generally considered preferable, however, that the case-papers should be in the custody of some other officer of the council, either in the area offices of a county or in the central office of the county or county borough. If the documents are not retained by the relieving officers these officers should have record cards or skeleton case-papers.

In some districts it has been found to be an advantage for all the case-papers to be kept at the central office, either with duplicates in the districts or an arrangement for the original documents to be sent from

the county office to the district for consideration by a relief committee as the necessity arises.

In a county borough the central office is more readily accessible than in a county, and the general practice is for the case-papers to be kept at the central office.

The case-papers should be filed in numerical order and recorded by means of a card index system. It is useful for the index to be made of cards of different colours, one colour being used for persons maintained in special institutions and one colour for persons maintained in mental hospitals, another colour for boarded-out children and another colour for recipients of ordinary outdoor relief or institutional relief. [860]

Relation to Public Health and other Departments.—In establishing a central index of public assistance, consideration must be given by the council to the varied forms of assistance granted by other committees of the council, in particular by the public health committee and its subsidiary committees, and as to how far it is desirable or necessary for records of such assistance to be contained in the central index.

Under the L.G.A., 1929 (e) it is the duty of the council to recover the expenses incurred by them in the maintenance of persons in institutions, except where admission to the institution was for the purpose of treatment for infectious disease. This provision does not apply merely to the duty of recovering the cost of assistance granted to a person in receipt of poor law relief. It is desirable that there should be the greatest possible measure of co-ordination of the arrangements made in regard to ascertaining the means and circumstances of the persons from whom recovery is due. In this connection the central register of public assistance, if properly organised, may readily give this information in regard to such cases. [861]

The various forms of assistance which may be granted by the public health committee of the council, or other committees having somewhat similar functions, may be considered under the following categories :—

(1) *Treatment of Tuberculosis.*—In connection with this service out-patient treatment may be provided at dispensaries and such treatment may include the provision of medicines and special requisites.

A person in receipt of outdoor relief may be receiving treatment at the same time from one of the council's tuberculosis dispensaries. It is desirable that information as to this should be available to the relief committee. If, therefore, there is a record of such treatment in the central index, the record would be attached to the poor law case-paper if the recipient was also in receipt of poor law relief. In-patient treatment may be afforded at approved sanatoria or hospitals. These cases should be recorded if the central index is to be of proper value.

Other forms of assistance which might be similarly dealt with are the provision of surgical appliances; the provision of dental treatment (including dentures); and the provision of nourishment and domiciliary treatment. It is very desirable that information in regard to the provision of nourishment should be entered in the central register, as it definitely prevents overlapping with poor law relief. It is clearly undesirable that the same person should receive assistance in kind from two departments of the same authority where, if the facts were known, the whole of the assistance could be given by one of those departments. [862]

(2) *Orthopædic Scheme*.—Assistance under a council's orthopædic scheme includes treatment at out-patient clinics; in-patient treatment at hospitals; the provision of surgical appliances.

There seems to be little object in recording mere attendances at an out-patient clinic, but it is desirable to record in the central register in-patient treatment and also the provision of surgical appliances. [863]

(3) *Maternity and Child Welfare Scheme*.—Under the Maternity and Child Welfare Scheme grants of milk may be made to expectant and nursing mothers and young children under five years of age in necessitous cases. Institutional treatment may be provided in confinement cases; dental treatment, including the provision of dentures, may be afforded to expectant and nursing mothers and young children. Spectacles may be provided for young children suffering from defects of the eye. Another item of expenditure under the maternity and child welfare scheme is the payment of the fees of medical practitioners called in by midwives under the Midwives Act, 1918, sect. 14 (*f*) in cases of emergency.

It is clearly desirable that the assistance granted under the Maternity and Child Welfare Scheme should be recorded on the central register except where this takes the form of mere medical attention and treatment. [864]

(4) *School Medical Service*.—The education committee may make provision for the treatment at school clinics or hospitals of children recommended by the school medical inspectors as suffering from dental defects, defective vision, enlarged tonsils and adenoids and other ailments.

The number of cases dealt with by each local authority is very considerable. Although technically this must be considered as akin to public assistance it hardly seems that any useful object would be served by entering in the register a record of such cases. [865]

(5) *Mental Defectives*.—Under the Mental Deficiency Acts, 1913 to 1927 (*g*), a county or county borough council may provide institutional treatment for mental defectives. [866]

(6) *Necessitous and Unemployable Blind*.—A county or county borough council may provide assistance for necessitous and unemployable blind under a scheme made under the Blind Persons Act, 1920 (*h*). In some areas the administrative machinery of the public assistance committee is used for the purpose of investigating applications for assistance and for the payment of grants.

It is clearly most desirable that there should be records on the central register of the cases dealt with under these schemes. [867]

(7) *Educational Grants*.—If the term public assistance is to be used in its most comprehensive form, quite distinct from its more limited meaning in regard to poor law assistance, it might be properly contended that records should also be kept of educational grants made by the education committee. It would, however, be rather absurd to extend the register to cover such grants. [868]

(8) *Provision of Meals for Children*.—Under sects. 82 to 85 of the Education Act, 1921 (*i*), meals may be provided for children attending an elementary school both on days when the school meets and other days. [868A]

(*f*) 11 Statutes 747.

(*h*) 20 Statutes 598.

(*g*) *Ibid.*, 160 *et seq.*

(*i*) 7 Statutes 175.

The suggestions which have been made as to the forms of assistance which should be recorded on the central register are based on actual experience and are intended to meet the general view underlying the suggestions made by the M. of H. as to the establishment of such a register.

If, however, a register of public assistance is to be of the greatest value it must in due course cover all forms of State assistance as well as local public assistance, but a general requirement that such registers should be kept would need legislation. [869]

London.—In London, where registration of assistance has been carried on for some years by voluntary agencies, progress has been made towards co-ordination with the county council. The councils of social service or branches of the Metropolitan Mutual Registration of Assistance have, in the past, maintained registers in different parts of London and in varying stages of completeness. Some boards of guardians had arrangements to exchange information with these agencies, and the L.C.C. took over those arrangements. The co-operation was, however, very partial, and it has only recently been decided to increase it. The intention is to make the existing registers as complete as possible before extending them to other parts of London. Cases are to be notified not less often than weekly. When notification has been received by the Registrar, the authorities or organisations who are assisting or have assisted the case are informed in confidence of the assistance given from other sources (*k*). [870]

(*k*) See 14th Annual Report of the M. of H. for 1932—33, p. 196.

CASE STATED

	PAGE		PAGE
1. BY A COURT OF SUMMARY JURISDICTION	423	2. BY QUARTER SESSIONS	431
(i.) Generally	423	A. By Consent of the Parties	431
(ii.) Procedure	425	B. At the Discretion of the Justices	432
(iii.) Time for Stating Case	426	(i.) Generally	432
(iv.) Form of Special Case	429	(ii.) Procedure and Hearing	434
(v.) Hearing and Determination	430	LONDON	435

See also title : APPEALS TO THE COURTS.

FOR THE GENERAL LAW RELATING TO MAGISTRATES, *See* HALSBURY'S LAWS OF ENGLAND, VOL. 19, TITLE "MAGISTRATES."

1. BY A COURT OF SUMMARY JURISDICTION

(i.) **Generally.**—One method by which the decision of a court of summary jurisdiction may be questioned is an appeal by way of case stated. The right of appeal given by statute (*a*) is to the High Court against a conviction, order, determination or other proceeding of a court of summary jurisdiction on the ground that it is erroneous in law or in excess of jurisdiction. Certain ambiguous points have had to be

(*a*) Summary Jurisdiction Acts, 1857, s. 2, and 1879, s. 33 ; 11 Statutes 300, 341.

settled in consequence of the difficulty experienced in reconciling the wording of the two Summary Jurisdiction Acts. The Act of 1879 incorporates the earlier statute so far as it is applicable, but whereas the earlier statute gives the right of appeal to either party to the proceedings before the justices if they are dissatisfied, sect. 33 of the Act of 1879 refers only to a person aggrieved by the decision in the court below. The alteration in the wording is not, however, intended to cut down the right of the parties to the proceedings to apply for a case (*b*). This has been interpreted to mean that, though an unsuccessful prosecutor may not be a person aggrieved within the Act of 1879, yet he is a party to the proceedings who, if dissatisfied, may ask for a case to be stated under sect. 2 of the Summary Jurisdiction Act, 1857 (*c*). Where the justices purport only to state the case under the Act of 1857 they are nevertheless deemed to have stated it under all their powers including the Act of 1879 (*d*). [871]

It is important to observe that a case cannot be stated unless the justices are sitting as a court of summary jurisdiction. Modern legislation has conferred so many miscellaneous functions upon justices that it is not always easy to determine with certainty when and under what circumstances the justices can be said to be acting as a court of summary jurisdiction (*e*). [872]

A court of summary jurisdiction means a petty sessional court, which must consist of two or more justices, and also a single justice, when the justices or justice act in the exercise of powers under the Summary Jurisdiction Acts or any other Act or by virtue of the commission of the peace or under the common law (*f*). Some statutes, e.g. sect. 251 of the P.H.A., 1875 (*g*), require, however, that for the transaction of business arising under the Act a court of summary jurisdiction shall consist of two or more justices of the peace sitting in petty sessions. [873]

The number of authorities defining and explaining this expression is too voluminous to be dealt with exhaustively here, but some examples will show the principle underlying the decisions. In the following cases it was held that the justices were not acting as a court of summary jurisdiction: when sitting in licensing sessions (*h*); when sitting to revise a jury list (*i*); when hearing appeals against poor rates (*k*); when acting under the lunacy and mental deficiency laws (*l*); when exercising powers delegated to them by a county council under the Cinematograph Act, 1909 (*m*).

(*b*) *Stokes v. Mitcheson*, [1902] 1 K. B. 857; 33 Digest 407, 1170.

(*c*) *R. v. Newport (Salop) Justices*, [1929] 2 K. B. 416; Digest (Supp.); Cf. *Foss v. Best*, [1906] 2 K. B. 105; 33 Digest 407, 1176.

(*d*) *Rochdale Building Society v. Rochdale Corpn.* (1886), 51 J. P. 134; 33 Digest 407, 1169, and see *Stokes v. Mitcheson*, *supra*.

(*e*) See title APPEALS TO THE COURTS in Vol. I.

(*f*) For definition, see Interpretation Act, 1889, s. 13 (11) (12); 18 Statutes 997, and *Boulter v. Kent Justices*, [1897] A. C. 556; 16 Digest 99, 6.

(*g*) 13 Statutes 730.

(*h*) *Boulter v. Kent Justices*, *supra*.

(*i*) *Hagmaler v. Willelson Overseers*, [1904] 2 K. B. 316; 33 Digest 311, 298. This work is no longer done by justices.

(*k*) *Wheeler v. Burmington Overseers* (1860), 29 L. J. (M. C.) 175. These appeals now go to quarter sessions.

(*l*) *Re Bethel's Application* (1899), 80 L. T. 492; 33 Digest 257, 1761; *Newman v. Foster* (1916), 86 L. J. K. B. 360; 33 Digest 272, 1900.

(*m*) *Huish v. Liverpool Justices*, [1914] 1 K. B. 109; 16 Digest 99, 13. For other examples, see *London Corpn. v. Wolff* (1916), 86 L. J. K. B. 534; 2 Digest 174, 400; *Peagram v. Peagram*, [1926] 2 K. B. 165; Digest (Supp.).

The ground for applying to the High Court to order the statement of a case by the justices is that the justices' decision is erroneous in point of law or in excess of jurisdiction (*n*). This was held to confer the right to apply for a case even though the proceedings were under a statute which provided that the decision of the justices should be final. The grounds of this decision would appear to be that the enactment in question was passed prior to 1879 (*o*). When the same issue was raised in respect to a statute passed after 1879 the court came to a different conclusion, and held that the justices had no power to state a case (*p*). No authoritative ruling has as yet been given upon the point whether the justices can avoid the operation of this rule by giving their decision subject to the opinion of the High Court and so saving the right to state a case. At least one eminent authority has suggested that this course is possible (*q*). [874]

If the appellant decides to proceed against the decision of the justices by way of case stated he is deemed to have abandoned any right he may have to appeal to quarter sessions. The abandonment is final and conclusive and for all intents and purposes (*r*). The justices themselves may refuse to state a case if they are of the opinion that the application is merely frivolous (*s*). This is the only ground on which they can refuse, and in the case of an application by the Attorney-General no refusal of any kind is permissible (*t*). Upon a refusal by the justices, the would-be appellant may require the justices to sign and deliver to him a certificate of their refusal. This certificate should state that the application was merely frivolous. The person aggrieved by the refusal of the justices to state a case may apply to the High Court, who may issue a rule to them and the respondent calling upon them to show cause why they should not state a case (*u*). Where the only issue is one of fact the justices cannot be compelled to state a case, and if they have done so the High Court will refuse to entertain it (*a*). [875]

It is not possible for the justices to state a case, where they have determined that they cannot hear a case in that they have no jurisdiction to do so (*b*). It is otherwise where they hear the case and then decline jurisdiction to determine it (*c*). [876]

(ii.) **Procedure.**—The aggrieved party must apply to the court of summary jurisdiction, the proceedings of which are in question, within seven days of those proceedings. The application is made in writing

(*n*) Summary Jurisdiction Act, 1879, s. 33; 11 Statutes 341.

(*o*) *R. v. Bridge* (1890), 24 Q. B. D. 609; 33 Digest 409, 1192.

(*p*) *Westminster Corpn. v. Gordon Hotels, Ltd.*, [1907] 1 K. B. 910; 38 Digest 234, 640; *Wills & Sons v. McSherry*, [1914] 1 K. B. 616; 41 Digest 244, 848.

(*q*) *Per* BUCKLEY, L.J., in *Westminster Corpn. v. Gordon Hotels, Ltd.*, *supra*, at p. 915. For further examples, see *R. v. Morn Hill Camp C.O.*, [1917] 1 K. B. 176; 16 Digest 254, 556; *Oaten v. Auty*, [1919] 2 K. B. 278; 33 Digest 407, 1172; *Tyrrrell v. Cole* (1918), 120 L. T. 156; 25 Digest 133, 523; *Warburton v. Stamp* (1919), 88 L. J. (K. B.) 1170; 25 Digest 187, 548.

(*r*) Summary Jurisdiction Act, 1857, s. 14; 11 Statutes 304.

(*s*) *Ibid.*, s. 4; 11 Statutes 301.

(*t*) *Ibid.*

(*u*) Summary Jurisdiction Acts, 1857, s. 5, and 1879, s. 33; 11 Statutes 302, 341.

(*a*) *R. v. Yeomans* (1860), 24 J. P. 149; 33 Digest 410, 1196; *Re Basingstoke School* (1877), 41 J. P. 118; 33 Digest 410, 1198; *Dyer v. Park* (1874), 38 J. P. Jo. 294; 25 Digest 366, 144; *R. v. Jones and Barry U.D.C.* (1907), 96 L. T. 723; 33 Digest 410, 1203.

(*b*) *R. v. West Riding of Yorkshire Justices* (1866), 6 B. & S. 802; 33 Digest 408, 1180.

(*c*) *Muir v. Hore* (1877), 47 L. J. (M. C.) 17; 33 Digest 408, 1181.

and left with the clerk of the court together with copies for each of the justices who adjudicated (*d*). The limitation of seven days applies to the copies left for the justices as well as the application left with the clerk (*e*), and a Sunday, even if it is the last of the prescribed days, must be reckoned as one of them (*f*). It was held to be a sufficient compliance with the rules when the appellant personally served a copy of the application on each of the justices, instead of leaving the copies with their clerk, and left with the assistant clerk a copy addressed to the clerk (*g*). [877]

The applicant will be required to enter into a recognisance, with or without sureties, for such a sum as the justices may fix. Either the justices to whom the application is made will fix this sum or some other justice exercising the same jurisdiction. The terms of the recognisance will be to prosecute the appeal without delay, to submit to the judgment of the High Court and to pay any costs which may be awarded. The case will not be delivered to the applicant until this is done (*h*). These provisions are similar to those which formerly bound an appellant in an appeal to quarter sessions from the decision of a court of summary jurisdiction. The new Summary Jurisdiction (Appeals) Act, 1933 (*i*), has greatly lightened the burden of an appellant to quarter sessions, whose means are small. From this it may be inferred that in future appeals by case stated will be avoided by such persons with a consequent increase in the number of appeals to quarter sessions. A corpn. can, by its duly authorised attorney, enter into a recognisance, but it must be clear that it is entered into on their behalf and that it binds the goods of the corpn. (*k*). [878]

The fees due to the clerk of the justices must be paid (*l*). The appellant, if in custody, will after these formalities be liberated upon his recognisance to appear before the same justices or other justices exercising the same jurisdiction within ten days of the judgment of the High Court being delivered. This will, however, not be necessary where the justices' decision is reversed (*m*). Should the conditions of the recognisance not be complied with the justices will endorse particulars of the default upon it. It will then be forwarded to the clerk of the peace for their area in order that he may see that it is enforced (*n*). [879]

(iii.) **Time for Stating Case.**—Where the justices consent to state a special case they must do so within three months from the date of the application (*o*). Upon receiving the case, the appellant must transmit it to the Crown Office at the Royal Courts of Justice within three days

(*d*) Summary Jurisdiction Rules, 1915 to 1932, r. 52 (S.R. & O., 1915, No. 200, and S.R. & O., 1932, No. 1034); this rule enlarges the time of three days limited by the Act of 1857. It is the clerk's duty to forward the copies to all justices concerned.

(*e*) *R. v. Stoke-on-Trent Justices*, [1926] 2 K. B. 461; 33 Digest 412, 1219.

(*f*) *Peacock v. R.* (1858), 4 C. B. N. S. 264; 33 Digest 412, 1222; *Wynne v. Ronaldson* (1865), 12 L. T. 711; 33 Digest 412, 1223.

(*g*) *R. v. Woodcock*, [1907] 2 K. B. 104; 33 Digest 412, 1224.

(*h*) Summary Jurisdiction Act, 1857, s. 3; 11 Statutes 301.

(*i*) 26 Statutes 545.

(*k*) *Leyton U.D.C. v. Wilkinson*, [1927] 1 K. B. 853; 33 Digest 413, 1229; cf. *Lawrence v. Martin*, [1928] 2 K. B. 454; Digest (Supp.).

(*l*) Criminal Justice Administration Act, 1914, s. 6 and First Sched.; 11 Statutes 374, 388, and S.R. & O., 1915, No. 279.

(*m*) Summary Jurisdiction Act, 1857, s. 3; 11 Statutes 301.

(*n*) *Ibid.*, s. 13; *ibid.*, 303.

(*o*) Summary Jurisdiction Rules, 1915 to 1932, r. 52 (S.R. & O., 1915, No. 200, and S.R. & O., 1932, No. 1034).

of receiving it (*p*). Before doing so he must give notice of appeal to the other party accompanied by a copy of the case (*q*). The question of time is as important in this connection as it is in respect to the application to state a case. Although the courts, in more recent years, are inclined to take a more lenient view of merely technical or accidental errors or omissions, several decisions of the courts on sect. 2 of the Summary Jurisdiction Act, 1857, are characterised by a lamentable formalism entirely repugnant to our standards at the present day. Thus very recently it was held by a Divisional Court that the Duke of Atholl had been deprived of his remedy of stating a case on the validity of his conviction for unlawfully selling a lottery ticket, because his solicitor had filed the case with the High Court simultaneously with the transmission by him of a copy of the case to the respondents, instead of transmitting the copy first and filing the case later as the section directs (*r*). The Divisional Court regretted their decision but felt bound to follow earlier decided cases. [880]

Both the transmission of the case to the High Court within three days and the giving of notice of appeal are conditions precedent to the hearing of the appeal. Unless the statute is complied with exactly the appeal cannot be heard (*s*). Sunday is not excluded in the computation of time (*a*). [881]

A delay in transmitting the case to the Crown office has not been regarded indulgently by the courts until recent times. It was held to be no good excuse that the delay was caused by sending the case back to the justices' clerk in order that he might correct it (*b*). This narrow attitude was relaxed, when it was held that a delay was excusable owing to the courts being closed over Easter (*c*), and proper transmission had been effected by depositing the case in the letter box of the Royal Courts of Justice on the third of the three days, though so late in the day that the office was closed and it was not in fact received until the next day (*d*). Curiously enough no decision seems ever to have been given as to the effect of a delay in transmission caused by the postal service, though there is ground for saying that such an excuse would be accepted as sufficient (*e*). From the foregoing, it will be seen that nothing but an excuse which acquits the appellant of any suggestion of dilatoriness is of any avail, and if it is shown that the delay was caused by the neglect of the London agent of the appellant's solicitor, the court will refuse to assist the appellant (*f*), and may grant against him the costs of a rule to show cause why the appeal should not be struck out of the list (*g*). [882]

The foregoing authorities show quite clearly that an appellant

(*p*) Summary Jurisdiction Act, 1857, s. 2; 11 Statutes 300.

(*q*) *Ibid.* For documents to be sent, see *Dickeson & Co. v. Mayes*, [1910] 1 K. B. 452; 33 Digest 415, 1264.

(*r*) Law Times Newspaper of March 3, 1934, p. 144.

(*s*) *Gloucester Local Board of Health v. Chandler* (1863), 32 L. J. (M. C.) 66; 33 Digest 414, 1244; *Woodhouse v. Woods* (1859), 29 L. J. (M. C.) 149; 33 Digest 415, 1257; *Edwards v. Roberts*, [1891] 1 Q. B. 302; 33 Digest 415, 1259.

(*a*) *Aspinall v. Sutton*, [1894] 2 Q. B. 349; 33 Digest 414, 1248.

(*b*) *Gloucester Local Board of Health v. Chandler*, *supra*.

(*c*) *Mayer v. Harding* (1867), L. R. 2 Q. B. 410; 33 Digest 414, 1252.

(*d*) *Holland v. Peacock*, [1912] 1 K. B. 154; 33 Digest 414, 1250.

(*e*) *Banks v. Goodwin* (1863), 3 B. & S. 548, *per* BLACKBURN, J., at p. 555; 33 Digest 414, 1247.

(*f*) *Pennell v. Uxbridge Churchwardens* (1862), 31 L. J. (M. C.) 92; 33 Digest 415, 1253.

(*g*) *Great Northern, etc., Joint Committee v. Inett* (1877), 2 Q. B. D. 284; 33 Digest 414, 1245.

will not always find it a simple matter to comply with the statutes regulating an appeal by case stated. This does not mean that a person of ordinary business-like habits will encounter any real difficulty, but it is frequently found that errors and omissions occur because it is not fully appreciated how vitally important these apparently trivial matters are. [883]

In addition to the care which must be taken to ensure that the application for the case to be stated and the transmission of the case to the High Court are carried out in the proper time and manner, the necessity for serving a notice of appeal upon the respondent has on occasions caused some difficulty. [884]

It has been stated already that an appeal cannot be heard where either the notice of appeal is not given or the case is not transmitted to the High Court within the time limited by statute. Even where it was proved that notice of appeal was not served because the respondent could not be found, the court held they were unable to entertain the appeal (*h*). So narrow an interpretation of the statute is bound to cause hardship, and the court intimated that they would have considered the appeal had their attention been directed to something which might reasonably be held to be equivalent to service of the notice of appeal (*i*). Other courts, even before the date of the decision just quoted, appear to have felt the same difficulty, and though the facts are in many cases very similar it is difficult to deduce any general principle from them. It has been held to be good service of the notice of appeal where after finding it impossible to trace the respondent within the time limited, the appellant served the notice upon the solicitor who represented the respondent before the justices (*k*). At the same time it must be borne in mind in this instance that a copy of the notice of appeal was served on the respondent *after* the time limited by statute, though he did not appear on the hearing of the appeal. This authority appears to be in accordance with the dictum already quoted, namely that the strict rule will not be enforced if it can be shown that for a good reason this was not possible and at the same time something has been done which may reasonably be described as service of the notice, or it is shown that in fact it is reasonably certain that the respondent knew of the appeal (*l*).

Other authorities bear out this proposition which has been frequently discussed in cases where the respondent was a seaman, who went to sea directly after the hearing by the justices. Service on the respondent's solicitor should be made in such cases (*m*). When the solicitor on whom the notice was served had ceased to act for the respondent, the court heard the appeal on it appearing that the respondent, a seaman, had eventually been served with the notice and case, even though this was months out of time (*n*). Where no attempt has been made to find the respondent, service of the case on his solicitor is insufficient even though he expressly accepts service (*o*). All these authorities

(*h*) *Foss v. Best*, [1906] 2 K. B. 105 ; 33 Digest 407, 1176.

(*i*) *Ibid.*, per DARLING, J., at pp. 107, 108.

(*k*) *Syred v. Carruthers* (1858), E. B. & E. 469 ; 33 Digest 416, 1265.

(*l*) On this latter part of the proposition, see *Teddington U.D.C. v. Vile* (1906), 70 J. P. 381 ; 33 Digest 416, 1267.

(*m*) *Wills & Sons v. McSherry*, [1913] 1 K. B. 20 ; 33 Digest 416, 1269 ; *Hill v. Wright and Wilson* (1896), 60 J. P. 312 ; 33 Digest 416, 1270, is probably no longer good law. See note (*p*), *post*.

(*n*) *Anderson v. Reid* (1902), 86 L. T. 713 ; 33 Digest 416, 1271.

(*o*) *Rust v. St. Botolph, Bishopsgate Churchwardens* (1906), 94 L. T. 575 ; 33 Digest 415, 1262.

appear to be distinguishable from one another, and that a less technical view will, where possible, be taken seems clear from the judgments in *Godman v. Crofton* (*p*) which decided that a notice of appeal was properly served on a solicitor having authority to accept service, even though no notice was served on the respondent himself. [885]

(iv.) **Form of Special Case.**—The special case must contain all the points on which it is desired to consult the High Court. No arguments will be entertained which are directed to points not taken before the justices (*q*). Certain apparent exceptions to this rule have been made. Any question of law arising from the facts as stated may be decided by the court (*r*), but it must be such that no evidence could alter it (*s*). Unless there is a patent defect in the case, no doubts can be raised as to its accuracy (*t*), but nevertheless the court have power to send the case back for amendment (*u*).

It is the practice for the appellant to draft his case and submit it to the respondent for his consideration. It is then finally settled by the justices whose decision is in question. All the justices who formed the court must sign the case, and it makes no difference that some of them did not agree with the decision as given (*v*). All the justices who took part in the hearing and decision complained of must sign the case, and many cases have been argued to decide what shall be done where one or more of the justices, who composed the court, cannot for some reason be found in order that his or their signatures may be obtained (*w*). The courts have held that a strict compliance with the rules is a condition precedent to the case being heard (*a*). The signatures should be obtained within the three months' period allowed by statute, but where this is found to be impossible owing to absence of some of them abroad, an extension of time may be obtained (*b*). The reason for this concession is that the court have ruled that the period of three months was not a condition precedent but only directory (*c*), and therefore a magistrate may sign a case even though at that time he had ceased to hold office (*d*).

The Crown Office Rules set out in detail the form and contents of

(*p*) [1914] 3 K. B. 803 ; 33 Digest 416, 1273, which disapproved of *Hill v. Wright and Wilson*, *supra*, note (*m*).

(*q*) *Purkis v. Huatable* (1859), 1 E. & E. 780 ; 33 Digest 419, 1303 ; *Molteram v. Eastern Counties Rail. Co.* (1859), 7 C. B. (N.S.) 58 ; 33 Digest 419, 1302 ; *Marshall v. Smith* (1873), L. R. 8 C. P. 416 ; 33 Digest 419, 1304.

(*r*) *Knight v. Halliwell* (1874), L. R. 9 Q. B. 412 ; 33 Digest 420, 1305 ; *Ex parte Markham* (1869), 21 L. T. 748 ; 33 Digest 409, 1186.

(*s*) *Kates v. Jeffery*, [1914] 3 K. B. 160 ; 33 Digest 420, 1308 ; *Northern Theatres Co. v. Shillito*, [1925] 2 K. B. 100 ; 33 Digest 420, 1306, and see *London, Edinburgh and Glasgow Assurance Co., Ltd. v. Parkington* (1903), 88 L. T. 732 ; 33 Digest 420, 1307.

(*t*) See, however, *Edge v. Edwards*, *post*, note (*i*) on p. 429.

(*u*) Summary Jurisdiction Act, 1857, s. 7 ; 11 Statutes 302.

(*v*) *Barker v. Hodgson* (1904), 68 J. P. 310 ; 33 Digest 413, 1236.

(*w*) *Westmore v. Paine*, [1891] 1 Q. B. 482 ; 33 Digest 411, 1212. Where some justices were abroad, see *Nantyglo U.D.C. v. Ebley* (1905), 69 J. P. Jo. 40 ; 33 Digest 413, 1237 ; *Walker v. Cummings* (1912), 28 T. L. R. 442 ; 33 Digest 414, 1238.

(*a*) *South Staffs Waterworks Co. v. Stone* (1887), 19 Q. B. D. 168 ; 33 Digest 411, 1210 ; *Westmore v. Paine*, *supra*.

(*b*) *Nantyglo U.D.C. v. Ebley*, *supra* ; *Walker v. Cummings* (1912), 28 T. L. R. 442 ; 33 Digest 414, 1238 ; *Haycock v. Joel* (1924), 88 J. P. Jo. 717 ; 33 Digest 414, 1239.

(*c*) *Hughes v. Wavertree Local Board* (1894), 58 J. P. 654 ; 33 Digest 414, 1241.

(*d*) *Grocock v. Grocock*, [1920] 1 K. B. 1 ; 33 Digest 414, 1240 ; and see *Marsland v. Taggart*, [1923] 2 K. B. 447 ; Digest (Supp.), where two of three justices had died.

the case. It should always be in numbered paragraphs each of which deals with a specific point and copies must be provided for the use of the judge (e). [886]

(v.) **Hearing and determination.**—On the hearing, the justices have no right to appear unless they have been made a party to the case (f) and in consequence may be mulcted in costs (g). When, however, they are parties to the proceedings, costs may be given for or against them (h). In one other case, described as happily very peculiar, the justices were ordered to pay costs because they had stated the facts incorrectly (i). [887]

The case is heard by a Divisional Court of the King's Bench Division (k) though there is a provision in the Summary Jurisdiction Act, 1857 (l), whereby a case may be heard by a judge in chambers. It is rarely, if ever, that this latter procedure is employed. [888]

Only one counsel is heard on behalf of each party (m), and the court on arriving at their conclusion on the case may reverse, affirm or amend the justices' decision (n). If it appears to the court to be expedient they may remit the case back to the justices with their opinion upon it (o) or make such order as they think fit (p). There is authority for saying that if the justices have convicted a person, under an incorrect finding on the law, the case will not be remitted for retrial, unless the justices by the case request the court to do so in the event of their being wrong (q). A case remitted with the opinion that the magistrate should convict must be reinstated to be dealt with in accordance with that direction of the High Court. If the magistrate does not do so a *mandamus* will issue to compel obedience to the court's opinion (r). [889]

Where the case relates to a joint conviction of several persons the court may confirm the conviction as against some and reverse it as against others (s). [890]

Unlike the Court of Criminal Appeal, the Divisional Court on a case stated have no power to reduce the penalty imposed by the justices (t), and where it is clear that an offence within the jurisdiction of the justices has or might have been committed, the court are in general reluctant to interfere (u). They do not, however, hesitate to quash a conviction when there was no evidence to support it (a). [891]

(e) Crown Office Rules 131, 132; S.R. & O., 1906, No. 512.

(f) *Smith v. Butler* (1885), 16 Q. B. D. 349; 33 Digest 418, 1287.

(g) Summary Jurisdiction Act, 1857, s. 6; 11 Statutes 302.

(h) *Ellis v. Lincoln Licensing Justices* (1888), 52 J. P. 88; 30 Digest 71, 563.

(i) *Edge v. Edwards* (1932), 48 T. L. R. 449; Digest (Supp.).

(k) Supreme Court of Judicature (Consolidation) Act, 1925, s. 24; 4 Statutes 157.

(l) S. 8; 11 Statutes 302.

(m) *Howes v. Peake* (1876), 33 L. T. 818; 33 Digest 418, 1288; *Spurling v. Bantoft*, [1891] 2 Q. B. 384; 33 Digest 418, 1289; *Bedfordshire Justices v. St. Paul, Bedford, Churchwardens* (1852), 7 Exch. 650; 33 Digest 448, 1585.

(n) Summary Jurisdiction Act, 1857, s. 6; 11 Statutes 302.

(o) *Ibid.*

(p) *Ibid.*

(q) *Taylor v. Wilson* (1911), 106 L. T. 44; 33 Digest 419, 1299.

(r) *R. v. Corser* (1892), 8 T. L. R. 563; 33 Digest 419, 1300.

(s) *Brown v. Turner* (1863), 13 C. B. (N. S.) 485; 33 Digest 418, 1295; *O'Neill and Galbraith v. Longman* (1863), 32 L. J. (M. C.) 259; 33 Digest 418, 1296.

(t) *Evans v. Hemingway* (1887), 52 J. P. 134; 33 Digest 419, 1297.

(u) *R. v. Davis* (1795), 6 Term Rep. 177; 25 Digest 386, 360; *R. v. Reason* (1795), 6 Term Rep. 375; 33 Digest 429, 1427; *Blackpool Local Board v. Bennett* (1859), 4 H. & N. 127; 33 Digest 418, 1291.

(a) *Watkin v. Fenwick* (1858), 7 W. R. 16; 33 Digest 418, 1294.

Where the special case relates to a criminal cause or matter, the decision of the Divisional Court thereon is final and conclusive, since the Court of Appeal has no jurisdiction in matters relating to crime (*b*). Where an important point of law or principle was involved, it was felt to be a disadvantage that the issues raised could not be considered by a higher tribunal. Cases will in consequence be found, where under sect. 17 of the Appellate Jurisdiction Act, 1876 (*c*), the case was re-argued before a larger court (*d*). This section has now been repealed, but since the provisions of sect. 17 are substantially re-enacted in the Supreme Court of Judicature (Consolidation) Act, 1925 (*e*), it is presumably still possible to adopt this course.

Where the case does not refer to a criminal cause or matter an appeal lies to the Court of Appeal by leave of the Divisional Court or the Court of Appeal (*f*).

There are a large number of authorities defining the expression "criminal cause or matter." Shortly it may be said that where the proceedings may result in a sentence of imprisonment it is a criminal cause or matter (*g*). Even where the proceedings are to recover money due, the case will be classified as criminal, if the process may be by information as well as complaint. If it is possible to proceed by complaint only it would be regarded as a civil debt (*h*). Some difficult questions arise on the interpretation of these words and it is not always a simple matter to maintain the distinction. For example, an order to pay the costs of an appeal to quarter sessions was made upon a person who had been convicted of wilful damage to property and trespassing upon a railway, and failed to proceed with the appeal. It was held that the order was one made in a criminal cause or matter (*i*). [892]

The court may make such order as to costs as it thinks fit (*k*) and in general they will be awarded to the successful party. The costs include the cost of preparing the special case (*l*), but not those of the hearing before the court of summary jurisdiction (*m*). They should be applied for immediately upon the conclusion of the hearing of the case (*n*). [893]

2. BY QUARTER SESSIONS

A. By Consent of the Parties.—At any time after the notice of appeal to quarter sessions, the parties may by consent obtain the order of a judge of the High Court for the submission of a special case to the

(*b*) Supreme Court of Judicature (Consolidation) Act, 1925, s. 31 (1) (*a*); 4 Statutes 160.

(*c*) 39 & 40 Vict. c. 59.

(*d*) *Saunders v. Richardson* (1881), 7 Q. B. D. 388; 19 Digest 566, 80.

(*e*) S. 63 (6); 13 Statutes 225.

(*f*) *Ibid.*, s. 31 (1) (*f*); 4 Statutes 161.

(*g*) *Robson v. Biggar*, [1908] 1 K. B. 672; 14 Digest 553, 6290.

(*h*) Summary Jurisdiction Act, 1879, ss. 6, 35; 11 Statutes 325, 342. See *Southwark and Vauxhall Water Co. v. Hampton U.D.C.*, [1899] 1 Q. B. 273, C. A.; 33 Digest 370, 791; *Seaman v. Burley*, [1896] 2 Q. B. 344; 14 Digest 553, 6289.

(*i*) *Rea v. Wiltshire Justices*, [1912] 1 K. B. 566; 14 Digest 554, 6295. See also *Wiffen v. Bailey and Romford U.D.C.*, [1915] 1 K. B. 600; 33 Digest 470, 37, and *R. v. Marlborough Street Police Magistrate, Ex parte Samuel* (1919), 63 Sol. Jo. 300, C. A.; 14 Digest 554, 6297.

(*k*) Summary Jurisdiction Act, 1857, s. 3; 11 Statutes 301; R.S.C. Ord. 65, Crown Office Rules, rr. 261, 262; S.R. & O., 1906, No. 512.

(*l*) *Glover v. Booth* (1862), 31 L. J. (M. C.) 270; 33 Digest 421, 1331.

(*m*) *Slaughter v. Sunderland Corpn.* (1891), 60 L. J. (M. C.) 91; 33 Digest 421, 1330.

(*n*) *Budenberg v. Roberts* (1867), L. R. 2 C. P. 292; 33 Digest 421, 1327.

High Court for their decision (o). It should be observed that this procedure is available at any time after the notice of appeal and that it is necessary to obtain both the consent of the parties, and the order of the judge. The agreement of the parties must include a consent that judgment in conformity with the decision of the court, and for such costs as may be adjudged, may be entered on motion by either party at the sessions next or next but one after the High Court have given their decision. The judgment has the same force and effect as if it had been delivered by the quarter sessions upon an appeal duly entered and continued.

The case when drafted should recite the judge's order and the agreement between the parties (p). [894]

This form of procedure has certain advantages which are particularly appropriate in the case of local government matters. In this class of case the facts are frequently not in dispute, but the opinion of a higher court is desirable upon difficult and important questions of law. The procedure under sect. 11 of the Act of 1849 eliminates the hearing before the quarter sessions and enables the parties to proceed at once before a tribunal which is able to give an authoritative decision. The opinion of the High Court may not be sought in this way in certain classes of case (q), but it is improbable that a local authority will often be affected by these exceptions.

The party supporting the order of the justices is entitled to begin (r), and an appeal will lie to the Court of Appeal even though in conformity with the agreement, the judgment of the High Court has been entered at quarter sessions (s). [895]

B. At the Discretion of the Justices. (i.) *Generally.*—There was formerly no other means than those already mentioned of obtaining the decision and opinion of the High Court, unless a writ of *certiorari* had been obtained, and this was clumsy and inconvenient. The procedure emanated from the practice which arose whereby the commission of the peace, which gives the justices in quarter sessions jurisdiction, directs them to take the opinion of the judge of assize upon points of difficulty. Later the justices adopted the expedient of embodying the grounds of their decision in the decision itself, which would make any error manifest upon the face of the record and so cognisable by the High Court. The disadvantage lay in the fact that where a special statute prohibited *certiorari*, no method lay open to the parties of taking the opinion of the High Court (t). This procedure still exists, but a more convenient method is now open to the quarter sessions. Under sect. 40 of the Summary Jurisdiction Act, 1879 (u), a writ of *certiorari* is

(o) Quarter Sessions Act, 1849, s. 11 (Baines' Act); 11 Statutes 296.

(p) *Peterborough Corpn. v. Thurlby Overseers* (1882), 8 Q. B. D. 586; 33 Digest 448, 1584.

(q) Orders in bastardy, proceedings under Acts relating to the Customs, Excise, Stamps, Taxes or the Post Office. See s. 11 (*supra*).

(r) *R. v. Holbeck Overseers* (1851), 16 Q. B. 404; 33 Digest 448, 1586; *Bedfordshire Justices v. St. Paul, Bedford, Churchwardens* (1852), 7 Exch. 650; 33 Digest 448, 1585.

(s) *Peterborough Corpn. v. Wiltshorpe Overseers* (1883), 12 Q. B. D. 1; 33 Digest 458, 1707; *Holborn Guardians v. Chertsey Guardians* (1885), 15 Q. B. D. 76; 33 Digest 458, 1708; *Lodge v. Huddersfield Corpn.*, [1898] 1 Q. B. 859; 33 Digest 458, 1710.

(t) See, generally, *Walsall Overseers v. London and North Western Rail. Co.* (1878), 4 App. Cas. 30; 16 Digest 186, 920, and *R. v. Chantrell* (1875), L. R. 10 Q. B. 587; 33 Digest 450, 1604.

(u) 11 Statutes 845.

no longer needed before a special case can be stated by quarter sessions for the opinion of the High Court. The history of the matter already set out shows that no case could be stated for the opinion of the High Court unless the justices at quarter sessions took the initiative. The same rule still obtains and the quarter sessions cannot in general be compelled to state a case even though it is clear that in a proper exercise of their discretion they should do so (*v*). They must, however, do so on an application by the Attorney-General and may be required by the High Court to do so in any determination of an appeal against a conviction by a court of summary jurisdiction or the sentence imposed on such a conviction if the applicant is dissatisfied with the determination as being erroneous in point of law (*a*). The difference in the origin of a case stated by quarter sessions from that stated by a court of summary jurisdiction is one of practical importance. Since it is the magistrates at quarter sessions who desire the assistance of the High Court, it was thought that they might state a case even when by the particular statute involved the decision of the quarter sessions was made final (*b*).

The Court of Appeal came to this decision in *Kydd v. Liverpool Watch Committee* (*c*) which raised certain questions under the Police Act, 1890 (*d*). On appeal to the House of Lords, however, it was held that the Divisional Court had no power to entertain the special case because the Act of 1890 prohibited any appeal from the quarter sessions (*e*). It is submitted, however, that the decision of the House of Lords is not of universal application in view of the statement by Lord Loreburn, L.C. (*f*), in which he says that he wishes to express no opinion as to other Acts containing different words. Lord Halsbury and Lord Ashbourne concurred and presumably this also was their opinion. [896]

After the matter has reached a certain stage even the quarter sessions may be compelled to state a case. If they come to their decision subject to a case being stated, a *mandamus* will issue to compel them to state the case or enter continuances and hear and determine the matter (*g*). The matter will be looked at strictly and no *mandamus* will issue, if having agreed generally to state a case, the justices' decision is against the party desiring the case upon the facts which raise the point of law (*h*). [897]

There is no power to state a case upon the trial of any indictment

(*v*) *R. v. Walsall Overseers* (1878), 3 Q. B. D. 457, *per* COCKBURN, C.J., at p. 473; 33 Digest 449, 1600; *Kydd v. Liverpool Watch Committee*, [1907] 2 K. B. 591, *per* BUCKLEY, L.J., at p. 609; 33 Digest 450, 1607. This case was reversed in H.L., but not upon this point. For the exceptions see below and also s. 31 (5) of the R. & V.A., 1925 (14 Statutes 658), which provides that quarter sessions after determining an appeal under that section from the decision of an assessment committee, shall state a case for the opinion of the High Court on proper application, unless of opinion that the application is frivolous.

(*a*) Criminal Justice Act, 1925, p. 20; 11 Statutes 408.

(*b*) *Upperton v. Ridley*, [1903] A. C. 281; 37 Digest 193, 132; *Garbutt v. Durham Joint Committee*, [1906] A. C. 291; 37 Digest 194, 139. Cf. *Westminster Corpn. v. Gordon Hotels, Ltd.*, [1907] 1 K. B. 910; 38 Digest 234, 640.

(*c*) [1907] 2 K. B. 591; 33 Digest 450, 1607.

(*d*) S. 11; 53 & 54 Vict. c. 45.

(*e*) [1908] A. C. 327.

(*f*) *Ibid.*, p. 331.

(*g*) *R. v. Bloam* (1834), 1 Ad. & El. 386; 33 Digest 454, 1674; *R. v. Suffolk Justices* (1832), 1 Dowl. 163; 33 Digest 449, 1599.

(*h*) *R. v. Pembrokeshire Justices* (1832), 2 B. & Ad. 391; 33 Digest 449, 1598; *Ex parte Jarvin Inhabitants* (1840), 9 Dowl. 120; 33 Digest 437, 1465.

unless the justices are called upon to do so by the Court of Criminal Appeal (*i*), except in respect of the non-repair or obstruction of a highway, bridge, or navigable river (*k*). The High Court will not entertain a case stated, if the decision upon it will not finally determine the matter (*l*).

A case may, however, be stated on any matter which comes before the quarter sessions for its final decision, including appeals against convictions for non-indictable offences (*m*) and appeals to it as the confirming authority under the Licensing Acts (*n*). The application for a special case should be made at the hearing and the leave of the court given prior to the close of sessions, though having regard to the Summary Jurisdiction (Appeals) Act, 1933 (*o*), sect. 7 (2), it would seem that the same necessity does not arise in regard to appeals to which that Act applies and sect. 20 (1) of the Criminal Justice Act, 1925 (*p*), enables an application for a case to be made in writing within seven days of the decision, while sect. 31 (5) of the R. & V.A., 1925 (*q*), enables such notice to be given within twenty-one days. [898]

(ii). *Procedure and Hearing*.—Formerly the High Court would not hear a case which was not drawn in a manner suitable to the procedure by way of *certiorari*, under which the court quashes or refuses to quash the order of the quarter sessions (*r*). Where the case is improperly or insufficiently stated, the court will remit it to be restated (*s*). The case should contain the conclusions of fact arrived at by the sessions and not merely the evidence from which conclusions may be drawn (*t*). It should also show that subject to the decision of the High Court, the quarter sessions have decided the matter, so that when the judgment of the High Court is known the matter is concluded once and for all (*u*). The case is signed by the chairman or recorder, and must be stated within a reasonable time. Since the case was brought before the High Court formerly on a writ of *certiorari* this time was usually six months. [899]

The case stated is deemed to be an appeal and is heard and determined accordingly (*v*). The High Court may draw any inference of

(*i*) Criminal Appeal Act, 1907, s. 20; 4 Statutes 736; *R. v. Salop Inhabitants* (1810), 13 East, 95; 33 Digest 449, 1593.

(*k*) Supreme Court of Judicature (Consolidation) Act, 1925, s. 29; 4 Statutes 160.

(*l*) *R. v. Sutton Coldfield* (1874), L. R. 9 Q. B. 153; 33 Digest 449, 1595; *R. v. Southampton Licensing Justices*, [1906] 1 K. B. 446, per Lord ALVERSTONE, C.J., at p. 449; 30 Digest 70, 552.

(*m*) *R. v. Allen* (1812), 15 East, 333; 33 Digest 401, 1116; *R. v. Handley* (1864), 9 L. T. 827; 33 Digest 434, 1433.

(*n*) *R. v. Southampton Licensing Justices, Ex parte Cardy*, [1906] 1 K. B. 446; 30 Digest 70, 552; *Colchester Brewing Co., Ltd. v. Tendring Licensing Justices*, [1916] 2 K. B. 126; 30 Digest 51, 397.

(*o*) 26 Statutes 545. (*p*) 11 Statutes 408. (*q*) 14 Statutes 658.

(*r*) *Kydd v. Liverpool Watch Committee*, [1907] 2 K. B. 591, C. A., per FLETCHER MOULTON, L.J., at p. 607; 33 Digest 450, 1607. See note (*v*), *supra*, p. 433.

(*s*) Supreme Court of Judicature (Consolidation) Act, 1925, s. 25 (2); 4 Statutes 157.

(*t*) *R. v. St. Cuthbert Wells Inhabitants* (1834), 5 B. & Ad. 939; 33 Digest 451, 1615; *R. v. Pilkington Inhabitants* (1844), 5 Q. B. 662; 33 Digest 451, 1620.

(*u*) *R. v. Wistow Inhabitants* (1841), 3 Q. B. 816, n.; 33 Digest 451, 1626; *R. v. Worth* (1843), 4 Q. B. 132; 33 Digest 451, 1627; *R. v. Westhoughton Inhabitants* (1843), 5 Q. B. 300; 33 Digest 451, 1628; *R. v. Stoke-upon-Trent Inhabitants* (1843), 5 Q. B. 303; 33 Digest 451, 1623; *R. v. Marton cum Grafton Inhabitants* (1847), 10 Q. B. 971; 33 Digest 451, 1632; *R. v. Headington Union* (1884), 50 L. T. 444; 37 Digest 248, 431.

(*v*) Supreme Court of Judicature (Consolidation) Act, 1925, s. 25 (1); 4 Statutes 157.

fact which might have been drawn by the quarter sessions and make any judgment or order which they ought to have made (*w*). The order of the quarter sessions, or where it is a criminal case the order and the conviction, and the case stated with their opinion or direction thereon may be remitted to the sessions, so that the quarter sessions may rehear the case and determine it (*w*). [900]

The judgment on any appeal by case stated or, where an appeal to a court of quarter sessions has been directed to be entered for rehearing, then that appeal shall on motion by any party to the appeal be entered at the sessions next or next but one after the delivery of the judgment or the giving of the direction (*x*). The effect of this, unless the High Court otherwise directs, is as though the judgment had been given or the appeal had been heard or determined by the quarter sessions at the time of the original hearing by them. Further entry and the respite of the appeal are dispensed with (*a*). [901]

Since a case stated is deemed to be an appeal there is no appeal from the decision of the High Court unless leave is given to do so by them or by the Court of Appeal (*b*). [902]

The High Court, and if there is an appeal the Court of Appeal, have full power to decide how and by whom the costs shall be paid, including the costs of the proceedings in quarter sessions (*c*). [903]

LONDON

The provisions of sect. 31 (5) of the R. & V.A., 1925 (*d*), do not apply to the administrative county of London. Sect. 40 of the Valuation (Metropolis) Act, 1869 (*e*), provides that the same proceedings may be had by special case and *certiorari* or otherwise for questioning any decision of the justices in assessment sessions as may be had for questioning any decision of the justices in general or quarter sessions. The section also provides for a procedure for the stating of a special case by consent of the parties and by order of a judge after notice of appeal to the assessment sessions has been given under the Act similar to that described in 2 A, *supra*, pp. 431 *et seq.* In other respects the general law as set out in the preceding part of this article applies to the administrative county of London. [904]

(*w*) Supreme Court of Judicature (Consolidation) Act, 1925, s. 25 (2).

(*x*) *Ibid.*, s. 25 (4).

(*a*) *Ibid.*; 4 Statutes 157.

(*b*) *Ibid.*, s. 31 (1) (f); *ibid.*, 161.

(*c*) *Ibid.*, s. 25 (3); *ibid.*, 157.

(*d*) 14 Statutes 658. See notes (*v*) and (*q*) on pp. 433, 434.

(*e*) *Ibid.*, 566.

CASTING VOTE

See MEETINGS.

CASUAL VACANCY

	PAGE		PAGE
DATE OF CASUAL VACANCIES -	436	FILLING OF CASUAL VACANCIES IN	
FAILURE TO ATTEND MEETINGS -	436	CASE OF COUNCILLORS -	437
ABSENCE OF MAYOR FROM		DATE OF ELECTION -	438
BOROUGH -	436	CASUAL VACANCY, PARISH COUN-	
DECLARATION OF VACANCY -	437	CILLORS -	438
FILLING OF CASUAL VACANCY IN		TERM OF OFFICE OF PERSONS FILL-	
CASE OF CHAIRMAN, MAYOR OR		ING CASUAL VACANCIES -	438
ALDERMAN -	437	LONDON -	438
CHAIRMAN OF PARISH MEETING -	437		

See also titles :

ACCEPTANCE OF OFFICE ; BALLOT ; CORRUPT AND ILLEGAL PRACTICES ; ELECTION AGENTS, LOCAL GOVERN- MENT ;	ELECTION PETITION ; LOCAL GOVERNMENT ELECTORS ; REGISTRATION OF ELECTORS ; RETURNING OFFICER.
---	--

Date of Casual Vacancies.—Casual vacancies to any office under the L.G.A., 1933, may be caused by the following reasons, *i.e.* :

- (a) non-acceptance of office ;
- (b) resignation ;
- (c) death ;
- (d) disqualification ;
- (e) election declared void ;
- (f) ceasing to be qualified ; and
- (g) a councillor accepting the office of alderman (a).

The date on which a casual vacancy for each of these reasons is deemed to have occurred is prescribed by the Act (a). [905]

Failure to Attend Meetings.—A casual vacancy may also be caused by failure to attend meetings throughout a period of six consecutive months, unless such failure was due to some reason approved by the local authority. Attendance at a meeting of a committee or sub-committee, or of a joint committee, joint board or other body to which any of the functions of the local authority have been delegated or transferred, is deemed to be attendance at a meeting of the local authority. Exception is made in the case of a member of the naval, military or air forces, when employed during war or any emergency on service, and in the case of any person whose employment in His Majesty's service in connection with war or any emergency is considered by the M. of H. to be such as to entitle him to relief from disqualification on account of absence (b). [906]

Absence of Mayor from Borough.—If the mayor of a borough is continuously absent from the borough, except through illness, for a

(a) L.G.A., 1933, s. 65 ; 26 Statutes 340.

(b) *Ibid.*, s. 63 (1) ; *ibid.*, 338.

period exceeding two months, he will, as from the expiration of that period, cease to hold that office (c). [907]

Declaration of Vacancy.—Where a member of a local authority ceases to be qualified to be a member, becomes disqualified or ceases to be a member by reason of failure to attend meetings or, as respects a mayor, by reason of absence from the borough, the local authority must forthwith declare his office to be vacant and signify the vacancy by notice signed by the clerk of the authority and affixed to the offices of the authority (d).

But under sect. 64 of the Act of 1933 no such declaration is required where the member becomes disqualified by reason of a surcharge or of a conviction, or of a breach of any enactment relating to corrupt or illegal practices, or where a declaration that an office is vacant has been made by the High Court under sect. 84 of the Act of 1933 (e). [908]

Filling of Casual Vacancy in case of Chairman, Mayor or Alderman.—When a casual vacancy occurs in the office of chairman of a county council or county alderman, or of mayor or alderman of a borough, or of chairman of a district or parish council, an election to fill the same must be held not later than the next ordinary meeting of the council held after the date of the vacancy, or if that meeting is held within fourteen days after that date, then not later than the next following ordinary meeting of the council, and is to be conducted in the same manner as an ordinary election (f).

Where the office vacant is that of a chairman of a county council or of a mayor, or of a chairman of a district council or parish council, a meeting of the council for the election may be convened by the clerk of the authority (g). [909]

Chairman of Parish Meeting.—In the case of a rural parish not having a separate parish council, a casual vacancy in the office of chairman of the parish meeting is filled by the parish meeting, which must forthwith be convened for the purpose of filling the vacancy (h). The meeting is convened by any person representing the parish on the R.D.C. or any six local government electors for the parish (i). [910]

Filling of Casual Vacancies in case of Councillors.—When a casual vacancy occurs in the office of county councillor, councillor of a borough, or district councillor, an election to fill the vacancy must be held :

- (a) in a case in which the High Court or council have declared the office to be vacant, within thirty days from the date of the declaration ; and
- (b) in any other case, within thirty days after notice in writing of the vacancy has been given to the clerk of the authority, by two local government electors for the county, borough or district (k).

[911]

(c) L.G.A., 1933, s. 63 (2) ; 26 Statutes 339.

(d) *Ibid.*, s. 64 ; *ibid.*

(e) 26 Statutes 350.

(f) L.G.A., 1933, s. 66 (1) ; 26 Statutes 341.

(g) *Ibid.*, s. 66 (2) ; *ibid.*

(h) *Ibid.*, s. 66 (3) ; *ibid.*

(i) *Ibid.*, Sched. III., Pt. VI., r. 2 ; *ibid.*, 502.

(k) *Ibid.*, s. 67 (1) ; *ibid.*, 341.

Date of Election.—Where a casual vacancy occurs within six months before the ordinary day of retirement from the office in which the vacancy occurs, the vacancy is to be filled at the next ordinary election and not by a special election unless the number of unfilled vacancies exceeds one-third of the whole number of members (*l*).

The words "ordinary day of retirement from the office in which the vacancy occurs" are taken from sect. 48 (4) (b) of the L.G.A., 1894 (*m*), and have been read as referring to the day on which the councillor in whose office the vacancy arises would actually have retired. Unless he would have retired within 6 months after the occurrence of the vacancy, a special election to fill the vacancy should be held. The day on which a special election to fill a casual vacancy is to be held is fixed by the county returning officer for a county councillor, the mayor for a borough councillor, or by the clerk of the district council for a district councillor (*n*). [912]

Casual Vacancy, Parish Councillors.—A casual vacancy among parish councillors is to be filled by the parish council and the parish council must meet forthwith for the purpose of filling the vacancy (*o*). [913]

Term of Office of Persons filling Casual Vacancies.—A person elected under the L.G.A., 1933, to fill a casual vacancy holds office until the date upon which the person in whose place he is elected would regularly have retired, and he should then retire (*p*). [914]

London.—The provisions of the L.G.A., 1933, referred to above do not apply to the Metropolis, and the law as to casual vacancies is to be found in the Municipal Corpn. Act, 1882, as adapted (a) by sect. 2 (4) of the London Government Act, 1899 (*q*), as regards mayors and aldermen, and (b) by sect. 2 (5) thereof (*q*), as regards councillors.

Mayor and Aldermen.—Sect. 2 (4) of the London Government Act, 1899 (*q*), applied the provisions of the L.G.A., 1888, with respect to the chairman of a county council and county aldermen to the mayor and aldermen of a metropolitan borough, except where otherwise provided in the Act. By virtue of sect. 75 L.G.A., 1888 (*r*), this includes sects. 40 (*s*), and 66 (*t*), of the Municipal Corpn. Act, 1882.

On a casual vacancy occurring in the office of mayor or alderman, an election is to be held by the same persons and in the same manner as an election to fill an ordinary vacancy, and the person elected holds office for the residue of the term of the person whose place he fills (*s*).

The election must be held within fourteen days after notice in writing of the vacancy has been given to the mayor or town clerk by two local government electors, and if necessary a special meeting of the council must be summoned. The notice of meeting for the election must be signed by the town clerk if the office vacant is that of the mayor, and in other cases the day of election is fixed by the mayor (*t*).

(*l*) L.G.A., 1933, s. 67 (3); 26 Statutes 502.

(*m*) 10 Statutes 808.

(*n*) L.G.A., 1933, s. 67 (2); 26 Statutes 341.

(*o*) *Ibid.*, s. 67 (6); *ibid.*, 342.

(*p*) *Ibid.*, s. 68; *ibid.*, 343.

(*q*) 11 Statutes 1226.

(*r*) 10 Statutes 746.

(*s*) Municipal Corpn. Act, 1882, s. 40; 10 Statutes 591.

(*t*) *Ibid.*, s. 66; *ibid.*, 596.

Councillors.—Sect. 2 (5) of the London Government Act, 1899 (*u*), applied the provisions of the law relating to the constitution, election and proceedings of administrative vestries and to the electors and members thereof to borough councils and their electors and members, except when otherwise provided. These, by virtue of L.G.A., 1894, sect. 48 (4) (*a*), were again the provisions of the Municipal Corpn. Act, 1882, but subject to such adaptations, alterations and exceptions as might be made by rules framed by the Local Government Board. The rules at present in force are the Metropolitan Borough Councillors Election Rules, 1931 and 1933 (*b*).

The principal differences in the filling of a casual vacancy between the case of a councillor, and that of a mayor or alderman, are :

- (a) The election must be held within one month instead of fourteen days.
- (b) The notice in writing must be given by two metropolitan borough councillors instead of two local government electors.
- (c) If the vacancy occurs through resignation, disqualification, or absence, no notice need be given and the election must be held within one month of the vacancy.
- (d) The town clerk fixes the day of election.
- (e) A casual vacancy occurring within six months of the ordinary day of retirement is not to be filled until the next ordinary election.

L.C.C.—The provisions of the L.G.A., 1888, and the Municipal Corpn. Act, 1882, sects. 40 (*c*), and 66 (*d*), *supra*, apply to casual vacancies in the offices of chairman, deputy chairman (*e*), county alderman and councillor. [915]

(*u*) 11 Statutes 1226.

(*a*) 10 Statutes 808.

(*b*) S.R. & O., 1931, No. 22, and 1933, No. 1127.

(*c*) Municipal Corpn. Act, 1882, s. 40; 10 Statutes 591.

(*d*) *Ibid.*, s. 66; *ibid.*, 596.

(*e*) L.G.A., 1888, s. 88; 10 Statutes 757.

CASUALS

	PAGE		PAGE
PRELIMINARY OBSERVATIONS	- 440	MEDICAL EXAMINATION AND	
GENERAL OUTLINE - -	- 440	ATTENTION - - -	445
PROVISION OF CASUAL WARDS -	441	TRANSFERS TO INSTITUTIONS -	446
MANAGEMENT OF CASUAL WARDS -	442	ADOPTION OF CHILD CASUALS -	446
THE ADMISSION OF CASUALS TO		PREVENTION OF CHILD CASUAL	
CASUAL WARDS - - -	443	FROM RECEIVING EDUCATION -	446
BATHING AND DISINFECTION -	443	REMEDIAL MEASURES - - -	447
DISCHARGE OF CASUALS - -	443	DISQUALIFICATION FOR UNEM-	
SEARCHING - - - -	444	PLOYMENT INSURANCE BENEFIT	447
DIETARY - - - - -	445	OFFENCES BY CASUALS - - -	447
TASKS OF WORK - - - -	445	PUBLICATION OF NOTICES - -	448
RELIGIOUS ADMINISTRATION -	445	LONDON - - - - -	448

See also titles : JOINT VAGRANCY COMMITTEES ;
PUBLIC ASSISTANCE ;
VAGRANCY.

The great bulk of the existing law on this subject is contained in the Poor Law Act, 1930 (a) ; the Public Assistance Order, 1930 (b) ; and the Public Assistance (Casual Poor) Order, 1931 (c). These will respectively be referred to in this article as "the P.L.A.," "the 1930 Order," and "the 1931 Order." [916]

Preliminary Observations.—The existing law as to casual wayfarers is the outcome of legislation extending over a period of more than three centuries and cannot be fully understood without some knowledge of this previous legislation and the circumstances which gave rise to it. The term "vagrant" appeared for the first time in any statute in 1547 (d) where it was used as synonymous with "vagabond" or "loiterer."

Under the Vagrancy Act, 1824 (e), and its amending Acts a vagrant may be convicted as an "idle and disorderly person" or a "rogue and vagabond" or an "incorrigible rogue" according to the class of offence of which he is convicted. A vagrant as now known to the poor law is termed a "casual poor person." This expression is defined in the P.L.A., sect. 163 (f), as "any destitute wayfarer or wanderer applying for or receiving relief." [917]

General Outline.—Each county and county borough council is responsible for the provision of relief to casual wayfarers and the maintenance of casual wards for their area. In those parts of the country in which joint vagrancy committees have been established (see title JOINT VAGRANCY COMMITTEES) the powers and duties of the councils in those areas must be considered in connection with the special powers conferred on the joint vagrancy committee.

(a) 12 Statutes 968.

(b) *Ibid.*, 1053 ; S.R. & O., 1930, No. 185.

(c) 24 Statutes 319 ; S.R. & O., 1931, No. 136.

(d) 1 Ed. 6, c. 3.

(e) 12 Statutes 913.

(f) *Ibid.*, 1047.

A departmental committee on the relief of the casual poor reported to the M. of H. on June 18, 1930. As the result of the publication of this report the Minister of Health issued the 1931 Order (g).

The departmental committee expressed the view that a wayfarer who, having the means to pay for his night's lodging, is unable to find accommodation and applies for relief to the public assistance authority, is not and should not be treated as a casual, but should be accommodated in an ordinary poor law institution, subject to the recovery by the council, if practicable, of the cost of any relief afforded (h).

The departmental committee recommended that every authority entrusted with the relief of the casual poor should give publicity to its work by the issue of a report, shewing the ordinary reader the nature and extent of the work done, and the principles upon which it is conducted. [918]

Provision of Casual Wards.—The council of every county and county borough, as the public assistance authority, must provide such casual wards in its area as the Minister of Health considers to be necessary (i).

It is the present policy of the Minister of Health to encourage the closing of casual wards wherever practicable. Casual wards have usually been provided in connection with a general poor law institution. The departmental committee urged that there should be careful ward planning to meet present-day needs. Well-defined routes for casuals have now been adopted by joint vagrancy committees and public assistance authorities in many parts of the country, and the practice is now becoming general, where the opportunity occurs, for casual wards to be maintained only at intervals of about fifteen miles. Taking this practice as a general basis, although even in areas where full schemes have been brought into operation, the distances may be as small as eight miles or as great as eighteen miles, redundant wards have been closed with the approval of the Minister of Health. When deciding as to the situation and number of casual wards there should be close co-operation between the councils of adjoining areas.

A casual ward means "any ward, building or premises set apart or provided for the reception and relief of casual poor persons" (k). When a county or county borough council desires to enlarge, alter or improve a casual ward the approval of the Minister of Health is necessary if it is desired to raise a loan to defray the expenditure, or if the expenditure involved by the work will exceed one thousand pounds (l).

The M. of H. issued a circular on June 2, 1931, with reference to a report made by officers of the Ministry as a result of a special investigation of casual wards in England and Wales. This report contains useful information in regard to the construction and management of casual wards.

The duty to provide casual wards extends to the provision of accommodation for male and female casuals and for children. The number of women admitted to casual wards is now comparatively small. The M. of H. has for some years past urged upon poor law authorities the desirability of relieving female casuals in the general poor law institution instead of providing special casual wards for them, thus enabling the female casual wards to be either closed or released for use by male

(g) See note (c) on previous page.

(i) *Ibid.*, s. 41; *ibid.*, 988.

(l) 1930 Order, Art. 14; *ibid.*, 1056.

(h) P.L.A., s. 20; 12 Statutes 980.

(k) *Ibid.*, s. 163; *ibid.*, 1047.

casuals. Young male children should be accommodated with the female casuals. [919]

Management of Casual Wards.—Where a casual ward forms part of a general institution the provisions in the 1930 Order as to the management of the institution generally apply to the management of the casual ward. The general control of the casual ward and of the officers engaged in connection therewith is exercised by the management committee, and any member of that committee may visit a casual ward (*m*). Where there is a house committee it is the duty of that committee to cause the casual wards to be inspected at least fortnightly by two or more members, and to report half-yearly to the management committee on the condition of the several wards of the institution (*n*). The government and control of an institution is by Art. 168 of the 1930 Order vested in the master of the institution under the directions of the management committee.

The master and the medical officer must report half-yearly upon the condition of the casual wards. The master must also report as to the observance of the regulations in the 1931 Order (*o*).

Where a casual ward is separate from an ordinary poor law institution the council must prescribe the duties of the management committee and the house committee on similar lines as far as practicable to those contained in the 1930 Order with regard to a general poor law institution (*p*).

For each separate casual ward the council must appoint a superintendent, a medical officer, a chaplain and (when requisite) a matron. Each of these officers is termed a senior poor law officer (*q*). These officers are required to perform such duties in relation to the casual ward as they would be required to perform as officers of a general poor law institution of which the casual wards form a part (*r*).

Up to the present time the number of separate casual wards has been very small, largely due to the cost of administering a separate institution; but as poor law institutions become more specialised the need for providing separate accommodation for casuals must increase.

It is the duty of the matron to supervise and control the premises set apart for female casuals and to assist the master in the general superintendence of the casual wards.

An inspector of the M. of H. may visit and inspect any casual ward (*s*).

The departmental committee on the relief of the casual poor drew attention to the undesirability of entrusting to inmates the duty of admitting casuals to the wards, serving meals and supervising the bathing and the performance of a task of work. It was therefore recommended that properly trained officers should be appointed for this work. It was also suggested that where wards are attached to any institution the chief officer of the institution should make a practice of visiting them frequently to ensure good administration. The Minister of Health considers it of the highest importance that no inmate

(*m*) 1930 Order, Art. 67; 12 Statutes 1064.

(*n*) *Ibid.*, Arts. 11, 72; *ibid.*, 1055, 1065.

(*o*) 1931 Order, Art. 15; 24 Statutes 321.

(*p*) *Ibid.*, Art. 3; *ibid.*, 320.

(*q*) 1930 Order, Arts. 143, 144; 12 Statutes 1075.

(*r*) 1931 Order, Art. 16; 24 Statutes 322.

(*s*) P.L.A., s. 9; 12 Statutes 974.

should be so employed as to give casuals the impression that he has any of the authority of an officer (*t*).

There must be provided in each casual ward a dayroom and proper sleeping accommodation. Beds and bed-clothing and a means of communication with a responsible officer must also be provided (*a*). The provision of hammocks is not regarded as a sufficient compliance with the requirement that beds must be provided. [920]

The Admission of Casuals to Casual Wards.—The Minister of Health may make regulations with regard to the admission of casuals to casual wards (*b*). The normal method of admission is by direct application to the officer in charge of the casual ward, but a relieving officer or assistant relieving officer also has power to grant an admission order. Any such order is only available on the day on which it is issued, and must shew the hour and place at which it was given (*c*).

If a person is refused admission to a casual ward the fact must be recorded in the appropriate institution books (*c*).

It was formerly the practice in some areas for a police constable to be designated as an assistant relieving officer for the purpose of giving orders for admission to casual wards. This system was deprecated by the departmental committee for the relief of the casual poor, who considered that normally the officer in charge of every casual ward should deal with each applicant for admission on his own responsibility.

The master of the institution must keep a record of all admissions in an admission and discharge book, and appropriate records must be kept in the books to be produced to the house committee (*d*). [921]

Bathing and Disinfection.—Every casual must be bathed on admission with clean warm water (unless there is reason to believe that this would be injurious to his health), and must be supplied with a clean towel (*e*). His clothing and all articles in his possession must be taken from him, examined in his presence, and dried and disinfected if required (*f*).

There is no obligation to disinfect a casual's clothing as a matter of routine, but only those clothes which are found to need it should be so treated. [922]

Discharge of Casuals.—The normal rule is that each casual must be detained for two nights after admission, and be discharged on the morning of the third day (*g*). No discharges should take place on Sunday, so when a casual is in a casual ward during the week-end he should be detained for three nights. This rule does not apply if a casual holds a vacant ticket issued by the Ministry of Labour, in which case he can take his discharge on the day following his admission not being a Sunday. He may also take his discharge on an earlier day than that generally allowed, in accordance with any rule allowing the earlier discharge of a particular class of casuals, which may have been adopted by the council with the approval of the Minister of Health (*g*).

A vacant ticket is a card furnished by an officer of an employment

(*t*) Circular, March 20, 1931.

(*a*) 1931 Order, Art. 11 ; 24 Statutes 321.

(*b*) P.L.A., s. 42, ; 12 Statutes 989.

(*c*) 1931 Order, Art. 4 (8) ; 24 Statutes 320.

(*d*) *Ibid.*, Art. 15 ; *ibid.*, 321.

(*e*) *Ibid.*, Art. 5 ; *ibid.*, 320.

(*f*) *Ibid.*, Art. 6 ; *ibid.*

(*g*) *Ibid.*, Art. 7 ; *ibid.*

exchange to a man in receipt of unemployment insurance benefit who desires to go to some other district in search of work. The card is issued to him if he wishes to claim for the days when he is away from his own town, and has satisfied the officer of the employment exchange that he is *bona fide* seeking work at the place to which he is going and that there is some prospect of his obtaining it. This card enables him to prove unemployment on the following day by signing the unemployment register at the town named on the ticket. At this town the card can be similarly marked for some further town which is either the man's destination or is on the route to it.

An example of a rule permitting early discharge that has been adopted in some areas is one whereby a casual may be permitted to discharge himself before the statutory period of detention if he produces satisfactory evidence of an offer of employment, or on production of satisfactory evidence of an appointment or interview, the keeping of which is deemed to be in the public interest.

Subject to the foregoing exceptions, a casual is not entitled to be discharged until he has performed an appropriate task of work (*h*).

In those areas where there is a joint vagrancy committee any special rule permitting early discharge must be adopted by that committee and not by the council of a constituent authority (*hh*).

A casual may be detained for an additional period of two days if he has been admitted on more than one occasion during one month into any casual ward of the same county or county borough (*i*). This provision is a re-enactment of a former provision in the P.L.A., 1927, but has now a wider application in county areas than formerly owing to the boards of guardians having been replaced by county councils. Under the former provision a casual who was admitted on more than one occasion during one month into any casual ward of the same poor law union was not entitled to discharge himself before the morning of the fourth day after his admission. The alterations imported into the P.L.A. by the L.G.A., 1929, have had the result that a casual who is admitted into any casual ward in the same county on more than one occasion during one month is liable to four nights' detention.

An inmate of a workhouse who is suffering from delirium tremens or bodily disease of an infectious or contagious character may be detained until the medical officer certifies that he is in a proper state to leave the workhouse without danger to himself or others (*j*). This provision seems to extend to casual wards, having regard to the definition of "workhouse" in sect. 163 of the P.L.A. (*k*), and the express exclusion of casuuls from sect. 33 (*kk*). It occasionally happens that casuuls suffering from scabies are admitted to casual wards. The M. of H. have expressed the view that scabies is a contagious disease within the meaning of this provision. [923]

Searching.—Until the issue of the 1931 Order, the regulations of the M. of H. required that every casual on his admission should be searched. The officer in charge of a casual ward has the statutory right to search a casual (*l*). There is no specific provision in the 1931

(*h*) P.L.A., s. 44; 12 Statutes 989.

(*hh*) 1931 Order, Art. 7; 24 Statutes 320.

(*i*) P.L.A., s. 44 (2); 12 Statutes 989.

(*j*) *Ibid.*, s. 34; *ibid.*, 986.

(*k*) 12 Statutes 1047.

(*l*) P.L.A., s. 43; *ibid.*, 989.

(*kk*) *Ibid.*, 985.

Order similar to that contained in previous Orders, but if the correct procedure is adopted on the admission of a casual, his clothing and all articles in his possession will be taken from him and examined in his presence. Definite regulations as to searching have been adopted in some areas. In particular it has been found expedient in some districts to make a regulation providing that food found on a casual on his admission should be taken from him and returned to him on his discharge. [924]

Dietary.—The dietary of casuals is a matter on which regulations may be made by the Minister of Health (*m*), and is now prescribed by the First Schedule to the 1931 Order. Dietaries for breakfast, dinner and supper are prescribed. With regard to children under twelve years of age the dietary is in the discretion of the medical officer, subject to the approval of the council. The Order prescribes *inter alia* a ration of 8 ozs. of bread for a man, and 6 ozs. of bread for a woman. In order to avoid waste the Minister of Health has approved of an arrangement in some areas whereby a ration of 6 ozs. may be issued in the first instance to a man, but where this plan is in force the other 2 ozs. must be issued to him on request.

A mid-day meal in accordance with the prescribed dietary must be provided for each casual on his discharge. In some areas tickets are issued to casuals so that they may obtain mid-day meals at stations on their route. The more usual practice, however, is for the mid-day meal to be handed to the casual on his discharge. [925]

Tasks of Work.—The tasks of casuals form a subject on which the Minister of Health may make regulations (*m*). The tasks actually prescribed by the Minister of Health under this provision are contained in the Second Schedule to the 1931 Order.

The Minister may, however, approve any other task of work submitted to him by the council (*n*).

Every casual who is not suffering from any physical infirmity must be required to perform one of the prescribed tasks (*n*). [926]

Religious Administration.—There is no specific reference to casual wards in connection with the prescribed duties of a chaplain of an institution, but it is his duty to conduct divine service in the institution every Sunday. It is clearly intended, however, that the chaplain should have some duties with regard to casuals. It is obligatory on a council to appoint a chaplain for a casual ward which is separate from a general poor law institution (*o*).

Every facility should be given to casuals to attend divine service on Sundays. Arrangements are in force in some areas for special services on Sunday in casual wards. [927]

Medical Examination and Attention.—The master of an institution must bring to the notice of the medical officer any casual who requires medical attention or appears to be suffering from mental illness (*p*).

The medical officer must, within 24 hours, report to the Minister any death occurring in the casual wards (*p*).

Apart from cases in which medical attention is required by any particular casual, the medical officer must carry out a routine medical examination of every inmate at least once a month (*p*). This is an

(*m*) P.L.A., s. 42; 12 Statutes 989.

(*n*) 1931 Order, Art. 10; 24 Statutes 321.

(*o*) 1930 Order, Art. 143; 12 Statutes 1075.

(*p*) 1931 Order, Art. 12; *ibid.*, 321.

added duty imposed on medical officers by the 1931 Order, and in the case of part-time officers it would be proper for special remuneration to be paid in respect of it. In some areas the fee has been fixed at one shilling a case with a minimum of one guinea for each visit. The fee is, however, in the discretion of each council concerned.

The Order does not provide for the monthly medical examination to be conducted simultaneously in every ward, but in many areas a uniform date has been prescribed by the joint vagrancy committee with the approval of constituent councils. In some areas it has been considered advisable for the examination to be on two consecutive days so that all casuals sleeping in the wards on the intervening nights might be examined.

It is the duty of the medical officer to report half-yearly to the house committee upon the condition of the casual ward (q). [928]

Transfers to Institutions.—It has been considered for some years the proper policy for aged and infirm casuals to be invited to enter the poor law institution. Any infirm casual may be transferred to the institution (r). This provision also applies to a child casual and to any other casual whose transfer is recommended by the medical officer.

In cases where a casual has been transferred to the institution at his request the matter must be considered at the next meeting of the management committee or house committee (r).

Arrangements may also be made for the transfer of casuals to hospitals or institutions not belonging to the local authority. (See also title **JOINT VAGRANCY COMMITTEE.**) [929]

Adoption of Child Casuals.—It is the usual practice for the local inspector of the National Society for the Prevention of Cruelty to Children to be notified of any neglected or ill-nourished child admitted to a casual ward. In some cases it is practicable for the council to assume parental rights over such children under the powers afforded by sect. 52 of the P.L.A., 1930 (s). A practical difficulty, however, in regard to the exercise of powers of this nature in regard to a child casual is that the child must be maintained by the council at the time when the resolution under this section is passed. There is no power to detain a child pending the meeting of the council at which the appropriate resolution can be passed, and the council has no authority to authorise any person to exercise its powers on this behalf between meetings. The powers, however, may be exercised by the public assistance committee where that committee has the requisite delegated powers under the administrative scheme (t). [930]

Prevention of Child Casual from Receiving Education.—By sect. 10 of the Children and Young Persons Act, 1933 (a), it is an offence for a person habitually to wander from place to place with a child casual so as to prevent the child from receiving efficient elementary education. Such a person is liable to a fine not exceeding twenty shillings.

This provision does not apply to a child in a canal boat, nor, during the months of April to September in certain circumstances, to a child whose parent is engaged in a trade or business of such a nature as to require him to travel from place to place.

(q) 1931 Order, Art. 15 (3); 24 Statutes 322.

(r) *Ibid.*, Art. 13.

(t) P.L.A., s. 4; 12 Statutes 971.

(s) 12 Statutes 994.

(a) See 26 Statutes 177.

In some parts of the country arrangements have been made for the local education committee to be notified of every child admitted to a casual ward.

These provisions do not affect the powers of a county or county borough council under sect. 52 of the P.L.A., 1930, referred to above. [931]

Remedial Measures.—County and county borough councils and joint vagrancy committees may subscribe to suitable voluntary bodies which provide reformatory agencies for casuals who wish to alter their mode of life (*b*).

Although such agencies are not specifically referred to in sect. 67 of the P.L.A., 1930 (*b*), it is clear that they are covered by the section, and it is believed that approval of the Minister of Health will be given in appropriate cases.

Various voluntary agencies in different parts of the country have provided facilities for the training of casuals. The Wayfarers Benevolent Association has provided two hostels, one at Heckmondwike, Yorkshire, and the other at Stanford-le-hope, Essex, for selected young casuals who, after a short period of training, are placed in occupations for which they appear to be fitted. The Brothers of St. Francis of Cerne Abbas, Dorset, were pioneers in rehabilitation schemes. In addition to the central home at Cerne Abbas, there are other homes or hostels organised by the same foundation in different parts of the country. The work began at the central home in 1921. Market gardening, poultry and pig farming are the chief industries; but printing, weaving, woodcarving, mat and basket making and rough carpentry are also carried on. Each man maintained is allowed pocket money. The actual administration of the various homes founded by the Order is undertaken by a local county committee. Some county committees obtain financial assistance from the appropriate joint vagrancy committees. There are other homes in the country organised by different voluntary bodies, but they are conducted usually on somewhat similar lines. [932]

Disqualification for Unemployment Insurance Benefit.—A claimant to unemployment benefit or transitional payments under the Unemployment Insurance Acts is disqualified for one day if he is relieved in a casual ward for one night (*c*). This day may be either the day of admission or the day of discharge. The Minister of Labour asks, therefore, that on every occasion on which a person who is relieved as a casual uses a vacant ticket it should be endorsed and signed by the officer in charge of the casual ward. [933]

Offences by Casuals.—A casual who leaves any casual ward before he is entitled to discharge himself therefrom, or refuses to be removed from a casual ward to any workhouse when properly required to do so, is to be deemed an idle and disorderly person within sect. 3 of the Vagrancy Act, 1824 (*d*).

A casual is similarly liable if he refuses or neglects to do a prescribed task of work or to observe the regulations prescribed (*d*). The various regulations referred to in this provision will be found in Art. 14 of the 1931 Order.

(*b*) P.L.A., s. 67; 12 Statutes 1001.

(*c*) Unemployment Insurance Act, 1920, s. 8 (3); 20 Statutes 662.

(*d*) P.L.A., s. 151; 12 Statutes 1042.

Apart from the power of enforcing a prolonged period of detention in the casual ward, neither the management committee, nor the officer in charge of a casual ward, has power to order the punishment of an inmate for habitual vagrancy. There is no power to detain a casual in a labour colony. [934]

Publication of Notices.—It is the duty of the management committee to cause to be exhibited in the casual ward a copy of Arts. 5, 6, 7, 10, 12 and 14 of the Public Assistance (Casual Poor) Order, 1931, and of sects. 43, 44, 150, 151, 154 and 159 of the P.L.A., 1930 (e). [935]

London.—The casual wards of the late Metropolitan Asylums Board were transferred to the L.C.C. as from April 1, 1930, in accordance with the provisions of the L.G.A., 1929. There were in 1932 nine casual wards in use with 762 beds and a hostel with 76 beds, the latter having been opened experimentally in 1923 to deal with the most promising cases amongst the casual and homeless poor and to assist them in obtaining employment. During 1931, 1,670 persons were admitted to the hostel and 518 discharged to situations, and during 1932 the figures were 1,718 and 406 respectively. Efforts are made to persuade elderly and infirm inmates of casual wards to settle permanently in suitable public assistance institutions.

An advisory committee known as the Metropolitan Homeless Poor Committee was set up in 1912 by the Local Government Board, consisting of representatives of the Metropolitan Asylums Board, the L.C.C., the Metropolitan and City Police and the more important voluntary relief agencies. A night office on the Embankment was established in connection therewith, to deal with the homeless poor who congregate there nightly. Applicants for help are interviewed and those likely to take advantage of the restorative influences provided by voluntary bodies are sent to the appropriate quarter, while those known to be habitual casuals are sent to the casual wards. The number of cases dealt with at the office during 1931 was 17,073, and during 1932, 18,371. Of these, about half were given orders to casual wards and the remainder were sent to voluntary organisations or to the hostel. Full details of this scheme were given in "London Statistics," Vol. XXVI., p. 79.

At a census of homeless persons taken by the county M.O.H. on February 14, 1930, 7 persons (males) were found sheltering under arches and 47 men and 25 women were found in the streets. On February 13, 1931, there were no persons found sheltering under arches, but 60 men and 18 women were found in the streets. On February 12, 1932, 3 women were found sheltering under arches, and 73 men and 11 women in the streets. Further particulars will be found in the last annual report of the L.C.C., Vol. I. (Part II.) relating to Public Assistance. [936]

CATCHMENT BOARDS

	PAGE		PAGE
INTRODUCTORY - - - -	449	Procedure (General) - - -	454
CONSTITUTION OF CATCHMENT		POWERS IN CONNECTION WITH	
BOARDS - - - -	450	THE MAIN RIVER - - - -	454
ORDER CONSTITUTING A CATCH-		POWERS OVER INTERNAL DRAIN-	
MENT BOARD - - - -	450	AGE BOARDS - - - -	455
Notice of intention to make -	450	General Supervision - - -	455
Notice of Order made - - -	450	Settlement of Disputes - -	455
Validity of the Order - - -	450	Exercise of Powers on Default -	455
MAP OF CATCHMENT AREA - -	451	Authority to inspect Documents	456
Notice of Preparation of Map -	451	Transfer of Functions - - -	456
Approval of Map - - - -	451	COMMUTATION OF OBLIGATIONS TO	
Effect of Map - - - -	451	REPAIR - - - -	456
Variation of Map - - - -	451	Procedure - - - -	456
APPOINTMENT OF MEMBERS OF		Remedies of the Landowner -	457
BOARD - - - -	452	Effect of Commutation - - -	457
PERIOD OF OFFICE - - - -	452	ACQUISITION OF ACCRETIONS OF	
VACATION OF AND DISQUALIFICA-		LAND - - - -	457
TION FOR OFFICE - - - -	452	POWERS AS TO BILLS AND PRO-	
CASUAL VACANCIES - - - -	452	VISIONAL ORDERS - - - -	458
PROCEEDINGS OF THE BOARD -	452	SERVICE OF NOTICES - - - -	458
Standing Orders - - - -	452	CROWN AND TIDAL LANDS - -	458
Payment of Chairman and Ex-		PROVISIONS OF LOCAL ACTS -	458
penses of Members - - - -	453	FINANCIAL - - - -	458
Evidence of Minutes - - - -	453	Expenses of the Board: How	
Disclosure of Member's Interest	453	Raised - - - -	458
POWERS AND FUNCTIONS OF CATCH-		Contributions from Internal	
MENT BOARDS - - - -	453	Drainage Boards - - - -	459
PREPARATION OF SCHEMES - -	453	Appeal Against Assessments -	459
For Transfer of Powers of Exist-		Precepts - - - -	459
ing Authorities - - - -	453	Grants from Public Funds - -	459
For Reorganisation of Internal		Borrowing Powers - - - -	460
Drainage Boards, etc. - - -	454	LONDON - - - -	460
Varying Awards - - - -	454		

See also titles: DRAINAGE BOARDS;
DRAINAGE RATES;
LAND DRAINAGE.

[NOTE.—The great majority of the references to statutes being to one Act, it has been thought unnecessary to do more than insert one reference to Halsbury's Statutes of England, namely that *infra* (note (a)), where the whole Act is to be found.]

INTRODUCTORY

Catchment Boards are constituted under the provisions of the Land Drainage Act, 1930 (a), by the Minister of Agriculture and Fisheries (b). A catchment board is a drainage authority (c) exercising jurisdiction over a drainage district (d) known as a catchment area. The expression "catchment area" is not defined in the Act, but has reference to the area drained by a main river (e) and its tributaries; thus, the boundaries follow the natural features of the watershed. The limits of each

(a) 23 Statutes 529.

(b) See definition in s. 81. He is subsequently referred to as "the Minister."

(c) For definition of "drainage authority," see s. 81.

(d) For definition of "drainage district," see s. 81.

(e) For definition of "main river," see s. 81.

catchment area are determined by a map required to be prepared by the Minister whereon the "main river" is shown by a distinctive colour (*f*). There are forty-seven catchment areas specified in Part I. of the First Schedule to the Act for which catchment boards were to be brought into being as soon as possible after the passing of the Act (*g*). But the Minister is empowered to make Orders (*h*) on the application of, or after consultation with, the councils of the counties and county boroughs concerned, directing areas to be added to or excluded from the First Schedule, or such alterations to be made in the Schedule as he thinks fit (*i*). [937]

CONSTITUTION OF CATCHMENT BOARDS

A catchment board is constituted by an Order made by the Minister (*k*), and consists of such number of members, not exceeding thirty-one, as the Minister may determine (*l*). It is a body corporate with power to hold land without licence in mortmain (*m*). There are two essentials for the constitution and effective operation of a catchment board, viz. : (1) an Order constituting the board, and (2) an official map determining its area. [938]

ORDER CONSTITUTING A CATCHMENT BOARD

(a) **Notice of Intention to make.**—When the draft Order has been prepared the Minister must give notice of his intention to make the Order by advertisement in the *London Gazette*, and in such other manner as he thinks best adapted for informing the persons affected (*n*). The notice must specify (a) the place where copies of the draft Order may be inspected and obtained, and (b) the time within and manner in which objections may be made. The notice must be sent to the council of every county and county borough in which part of the proposed area is situate, and to every drainage authority, navigation authority, harbour authority, or conservancy authority (*o*) known to be exercising jurisdiction in the proposed area (*p*).

The Minister is required to consider any objections duly made to the draft Order, and may, in any particular case, hold a public local inquiry with respect to any such objections (*q*). [939]

(b) **Notice of Order made.**—When the Minister has made the Order, he must publish in the *London Gazette*, and in such other manner as he thinks best adapted for informing the persons affected, a notice stating (a) that the Order has come into force, and (b) the place where a copy may be seen at all reasonable times (*r*). [940]

(c) **Validity of the Order.**—The Order when made is valid without Parliamentary confirmation. Any person aggrieved, however, may

(*f*) S. 5 (1).

(*g*) S. 3 (5).

(*h*) If opposed, such Orders are provisional only until confirmed by Parliament (s. 2 (3)).

(*i*) S. 2 (2).

(*k*) S. 3 (1).

(*l*) *Ibid.*

(*m*) S. 1 (2).

(*n*) S. 13 and Second Schedule, Part I., para. 1.

(*o*) See definition of these expressions in s. 81.

(*p*) Second Schedule, Part I., para. 1. See also Land Drainage (General) Regulations, 1932 (S.R. & O., 1932, No. 64), Art. 7.

(*q*) Second Schedule, Part I., para. 2.

(*r*) Second Schedule, Part III., para. 1. The Order may provide by whom the expenses of making the Order are to be borne or the rates upon which they are to be charged (s. 14).

make application to the High Court to have the Order quashed on two grounds, viz. : (a) that it is *ultra vires* of the Act, or (b) that some requirement of the Act has not been complied with (s). Such an application can only be made within six weeks of the publication in the *London Gazette* of notice that the Order has come into force (t). The Court may quash the Order generally, or in so far as it affects the applicant (u). An Order cannot otherwise be questioned by prohibition, or *certiorari*, or in any legal proceedings whatsoever (a). [941]

MAP OF CATCHMENT AREA

The Act imposed on the Minister the immediate duty of preparing a map of each catchment area and supplying a copy to the catchment boards (b). This map determines the extent of such area and shows by some distinctive colour that part of the river (c) channel which is to be treated as the main river (d), and the watercourses (e) to be deemed part of it (f). [942]

(a) **Notice of Preparation of Map.**—When the map has been prepared the Minister is required to publish notice of it in one or more newspapers circulating in the area. The advertisement must state that the map has been prepared ; specify the place at which a copy may be inspected ; and the time (not less than one month) within which, and the manner in which, objections may be made (g). [943]

(b) **Approval of Map.**—On the expiration of the time specified, without objections having been received, the Minister approves the map as prepared. If objections are made, the Minister must first consider them and may then approve the map as prepared or with such variations as he thinks proper (h). [944]

(c) **Effect of Map.**—The approved map is conclusive evidence for all purposes as to (a) the extent of the catchment area, and (b) what is the main river (i). [945]

(d) **Variation of Map.**—A catchment board may make application to the Minister, at any time, to vary the map of the catchment area so far as relates to the extent of the main river (k). The procedure to be thereupon adopted is similar to that in respect of making the original map (l). A copy of the map as varied is to be supplied to the catchment board (m). [946]

(s) Second Schedule, Part III., para. 2. The decision of the Court of Appeal is final, except by leave of the court (*ibid.*, para. 4).

(t) *Ibid.*, para. 2. (u) *Ibid.* (a) *Ibid.*, para. 3. (b) S. 5 (1), (6).

(c) For definition of "river," see s. 2 (4).

(d) For definition, see s. 81.

(e) *Ibid.*

(f) S. 5 (1).

(g) *Ibid.*

(h) S. 5 (2).

(i) S. 5 (4). It is also deemed to be a document issued by the Minister for the purposes of the Documentary Evidence Acts, 1868 to 1895 (*ibid.*, sub-s. (5)). They are the Acts of 1868, 1882 and 1895. *Primâ facie* evidence of the map may therefore be given by mere production of a copy purporting (a) to be printed by the King's Printer or under the superintendence or authority of H.M. Stationery Office, or (b) certified by the Minister or the Secretary to the Ministry or some person authorised to act on behalf of the Secretary.

(k) S. 5 (3). Any other variation would require to be made by Order under s. 2 (2), (3).

(l) *Ibid.*

(m) S. 5 (6).

APPOINTMENT OF MEMBERS OF BOARD

The members are appointed as follows: (a) one by the Minister; (b) not less than two-thirds of the remainder by the councils of the counties and county boroughs wholly or partly within the catchment area; (c) the residue by the Minister after consultation with, and taking into consideration nominations by, the internal drainage boards (n) within the area, as representing such boards (o).

In making these appointments both the councils and the Minister are to have regard to the desirability of including as far as practicable, persons having a practical knowledge of land drainage. County councils must, moreover, secure adequate representation to the urban districts within the catchment area, having regard to the relative rateable values of the urban and rural districts therein (p). The number of members to be appointed by the councils of counties and county boroughs respectively, is dependent upon the amounts contributed by each council towards the expenses of the catchment board, but persons so appointed need not be members of the appointing council (q). [947]

PERIOD OF OFFICE

Members of the board come into office on the first day of November next after the date of their appointment and hold office for three years (r). If not otherwise disqualified, a vacating member is eligible for re-appointment (s). [948]

VACATION OF AND DISQUALIFICATION FOR OFFICE

A member may resign his office by signed notice in writing to the chairman (t). He vacates office if he (a) becomes bankrupt, or (b) makes a composition or arrangement with his creditors, or (c) is absent from meetings for more than six months consecutively unless due to illness or some other reason approved by the board (u). An undischarged bankrupt or a person having made a composition or arrangement with his creditors during the preceding five years is disqualified for appointment as or being a member (a). [949]

CASUAL VACANCIES

A casual vacancy is filled by the Minister or the council by whom the vacating member was appointed (b). The person appointed holds office for the remainder of the vacating member's period of office (c). But if this period is less than six months the casual vacancy need not be filled (d). [950]

PROCEEDINGS OF THE BOARD

Standing Orders.—The board may, subject to the approval of the Minister, make rules, (a) for regulating their proceedings, including notice and place of meeting and quorum; (b) with respect to the

(n) See definition, s. 81.

(o) S. 3 (2).

(p) *Ibid.*

(q) S. 3 (2), (3). But the number appointed by county boroughs is not to exceed half the aggregate number appointed by the counties and county boroughs (s. 3 (3) (a)), and it may be that in some catchment boards, county boroughs may contribute more than county councils with no corresponding increase in their representation.

(r) First Schedule, Part II., para. 2.

(s) *Ibid.*, para. 7.

(t) *Ibid.*, para. 2.

(u) *Ibid.*

(a) *Ibid.*, para. 6.

(b) *Ibid.*, para. 4.

(c) *Ibid.*, para. 5.

(d) *Ibid.*, para. 4.

appointment of a chairman and vice-chairman; (c) for constituting committees, authorising them to co-opt members and regulating their proceedings; and (d) authorising delegation to committees (e). [951]

Payment of Chairman and Expenses of Members.—The board may pay (a) a salary to the chairman, and (b) the travelling expenses of members attending meetings if authorised by an Order of the Minister (f). [952]

Evidence of Minutes.—A minute of a board or committee meeting purporting to be signed by the chairman at that or the next ensuing meeting, is receivable in evidence without further proof. Every meeting of which a minute of the proceedings has been so signed is, until the contrary be proved, deemed to have been duly convened and held, and the proceedings duly transacted (g).

The proceedings of the board are not invalidated by any vacancy, or any defect in the appointment or qualification of any member (h). [953]

Disclosure of Member's Interest.—Any member interested in any company with which the board has, or proposes to make, any contract, is required to disclose the fact and nature of his interest, and to abstain from any deliberation or decision of the board relating to such contract. A note of the disclosure must be forthwith recorded on the minutes (i). [954]

POWERS AND FUNCTIONS OF CATCHMENT BOARDS

A catchment board have sole jurisdiction over the main river, including its banks and the drainage works in connection with it (k). They also exercise a general supervision with respect to the drainage of the catchment area (l), and over internal drainage boards (m), concerning the performance of their powers and duties (n). [955]

PREPARATION OF SCHEMES

(a) **For Transfer of Powers of Existing Authorities.**—In order to enable catchment boards to execute their powers effectively it is essential that there shall be transferred to them the powers of all drainage authorities operating on the main river. Catchment boards are therefore, after constitution, required to take immediate steps to prepare a scheme for transferring to themselves all powers, duties, liabilities and property of such existing authorities (o). [956]

(e) First Schedule, Part II., para. 9.

(f) *Ibid.*, para. 12.

(g) *Ibid.*, para. 11.

(h) *Ibid.*, para. 8.

(i) *Ibid.*, para. 3.

(k) S. 6 (1), and see definition of "main river," s. 81.

(l) S. 7 (1).

(m) See definition, s. 81.

(n) Being also "drainage boards" within the meaning of the Act (see s. 3), catchment boards (unless the contrary is provided) are endowed with the general powers of such boards. For a summary of these powers, see note (m), *post*, p. 455. See, generally, title DRAINAGE BOARDS.

(o) S. 4 (1) (a). The Order confirming such a scheme does not need Parliamentary confirmation (s. 4 (3)).

(b) **For Reorganisation of Internal Drainage Boards, etc. (p)**—A further scheme has then to be prepared for such matters as (a) the alteration of boundaries, amalgamation, abolition or re-constitution of internal drainage districts and boards, and the constitution of new districts and boards on an elective basis (q), where not already on that basis; (b) the abolition of all Commissioners of Sewers within the catchment area (r); (c) the making of alterations in, and additions to, the provisions of any local Act (s) or award made under such Act; and (d) supplemental or consequential provisions, including the transfer to the new drainage boards of any property, powers, duties and liabilities (t). [957]

(c) **Varying Awards (u)**.—They have also power to prepare schemes for (i.) revoking, varying or amending any provisions contained in an award under any public or local Act relating to land drainage in the catchment area, or affecting the powers or duties of any drainage authority or other person with respect thereto; and (ii.) commuting the obligation of any person under the award to repair or maintain any drainage works (a). The scheme may also contain all necessary consequential provisions (b). [958]

Procedure (General).—All such schemes have to be confirmed by an Order of the Minister. When the board has drafted and submitted a scheme to the Minister they must (a) send copies to every county and county borough council, drainage board, navigation authority, harbour authority and conservancy authority affected; and (b) advertise, in one or more newspapers circulating in the area, a notice stating (i.) that the scheme has been submitted; (ii.) that a copy may be inspected at a specified place; and (iii.) that representations may be made to the Minister within one month (c). The Minister may make an Order confirming any of the three foregoing classes of schemes, with or without modifications; but if an Order confirming a scheme under sect. 4 (1) (b) or sect. 8 (d) is opposed, such Order is provisional only and requires to be confirmed by Parliament (e). [959]

POWERS IN CONNECTION WITH THE MAIN RIVER (f)

The principal function of a catchment board is the care of the main river, including the banks and drainage works in connection therewith.

(p) The Minister's Order confirming such a scheme, if opposed, is provisional only and requires confirmation by Parliament (s. 4 (3)).

(q) See Land Drainage (Election of Drainage Boards) Regulations, 1932 (S.R. & O., 1932, No. 1021).

(r) Every Commission of Sewers in force at the commencement of the Act remains in force until replaced by such a scheme. See s. 83 (2).

(s) This means an Act, the operation of which is limited to a particular area, or any clauses of a public general Act so limited. See e.g. *Richards v. Easto* (1846), 15 M. & W. 244; 42 Digest 602, 16; *R. v. London County Council*, [1893] 2 Q. B. 454; 33 Digest 106, 709. See also s. 8.

(t) S. 4 (1) (b).

(u) S. 8 (1). The Minister's Order confirming such a scheme, if opposed, requires confirmation by Parliament (s. 8 (3)).

(a) S. 8 (2). Cf. the provisions of s. 4 (1) (b) (viii.).

(b) The basis of commutation is the same as provided for in s. 9. The provisions of s. 8 have no application to the Doncaster Drainage District. See s. 65 (2).

(c) S. 4 (2).

(d) See paras. (b) and (c), *supra*.

(e) S. 4 (3). The procedure in connection with the making of these Orders is similar to that described *ante*, p. 450, but Part II. of the Second Schedule to the Act must also be complied with.

(f) For definitions, see s. 81.

Any part of the main river which was vested in any other drainage authority becomes vested in the board and all powers in connection therewith are solely exercisable by them (g). If their area abuts on the sea or on any estuary they are empowered to construct all works and things necessary to secure an adequate outfall for the main river. They may execute the works themselves or enter into agreements with a borough or urban district council or any navigation authority to carry out such authorised works on agreed terms (h).

They may prevent the construction of new bridges over the main river, and any new bridge must be constructed in accordance with plans and sections approved by the board (i). The board may remove, alter or pull down any work executed in contravention of these requirements, and recover the expenses incurred from the offender summarily as a civil debt (k).

Catchment boards are "drainage boards" within the meaning of the Act (l). They are, therefore, endowed with the powers and duties of such boards unless specifically excluded (m). [960]

POWERS OVER INTERNAL DRAINAGE BOARDS

General Supervision.—Catchment boards are to exercise general supervision over the internal drainage boards within the catchment area, and may give them directions as to the execution of their duties with a view to securing efficient working, the maintenance of existing works and the construction of requisite new works (n). [961]

Settlement of Disputes.—Any question arising between the two boards in connection with these matters must be referred to the Minister (o). On giving his decision the Minister is required to present a report to Parliament giving particulars of the question referred and the reasons for his decision (p). [962]

Exercise of Powers on Default.—Where an internal drainage board do not properly execute their powers, with the consequence that land in the catchment area is injured or is likely to be injured by flooding or inadequate drainage, the catchment board may take over such powers

(g) S. 6.

(h) S. 6 (4). Any dispute arising as to these works is referred to the Minister or to a single arbitrator, appointed, in default of agreement, by the President of the Institution of Civil Engineers (*ibid.*, sub-s. (5)).

(i) S. 64 (1). Consent under this section to the construction of a new bridge must not be unreasonably withheld.

(k) S. 64 (2). For the summary recovery of civil debts, see title SUMMARY PROCEEDINGS.

(l) S. 3 (1).

(m) The general powers conferred on "drainage boards" to maintain and improve existing works and construct new works are exercisable by catchment boards solely in relation to the main river (s. 34 (1)). The other powers include (*inter alia*) the right to appropriate and dispose of shingle, sand and other spoil without payment of compensation (s. 38); the transfer of powers and duties of navigation authorities (s. 40); power to vary navigation rights (s. 41) and levy tolls (s. 42); as to obstructions in watercourses (s. 44); power to buy, sell and exchange lands (s. 45); the making of bye-laws for securing efficient working of the drainage system (s. 47); and the appointment of officers (s. 48). They are also required to submit an annual report and statement of accounts (s. 49). See, generally, title DRAINAGE BOARDS, *post*.

(n) S. 7 (1). For limitation of the powers of internal drainage boards, except with the consent of catchment boards (which must not be unreasonably withheld), see s. 7 (2) (a), (b), and title DRAINAGE BOARDS.

(o) S. 7 (4).

(p) S. 7 (5).

and also the drainage board's powers of defraying expenses. They must first give the internal drainage board not less than thirty days' notice in writing of their intention, and if the internal board give written notice of objection, the catchment board cannot exercise the powers except with the consent of the Minister (*q*). If necessary, a local inquiry may be held (*r*). The council of a county or county borough, any part of whose area is within the catchment area, may apply to exercise these powers, and the catchment board may direct accordingly (*s*). If such an application is refused, the council may appeal to the Minister (*t*). [963]

Authority to Inspect Documents.—Where a catchment board are exercising powers on the default of an internal drainage board under s. 10 they may authorise any person to inspect and take copies of any deeds, maps, books, papers or other documents in the possession of the internal drainage board (*u*).

Any one obstructing or impeding such a person in the execution of these powers is liable on summary conviction to a fine not exceeding £5 (*v*). [964]

Transfer of Functions.—A catchment board may petition the Minister for an Order transferring the powers, duties, liabilities, obligations and property of an internal drainage board, and constituting themselves the drainage board (*w*). If the internal drainage board oppose such order it will be provisional only and requires confirmation by Parliament (*a*). [965]

COMMUTATION OF OBLIGATIONS TO REPAIR

As exclusive powers with respect to main rivers are vested in them, catchment boards are required to commute all obligations to do any work in connection with the main river (whether repair of banks, maintenance of watercourses or otherwise) which may be imposed on persons by reason of tenure, custom, prescription or otherwise (*b*). [966]

Procedure.—The catchment board fix the commuted sum to be paid. This is an amount which fairly represents the probable average annual cost, taking one year with another, to the person in duly carrying out his obligation, having regard to the conditions prevailing on January 1, 1900 (*c*). The board then give the person affected notice, in the terms and manner prescribed, of (*a*) the proposal to commute the obligation,

(*q*) S. 10 (1).

(*r*) *Ibid*.

(*s*) S. 10 (4). The board have power (with the consent of the Minister) on giving six months' notice to the council to revoke any such authority and give new directions.

(*t*) *Ibid*.

(*u*) S. 10 (2).

(*v*) S. 10 (3).

(*w*) S. 11. If an Order is made, the expenses incurred will be defrayed in accordance with the transferred powers.

(*a*) S. 11.

(*b*) S. 9 (1). As to these obligations, see *Keighley's Case* (1609), 10 Co. Rep. 139 (*a*); 41 Digest 54, 390; *R. v. Somerset Sewers Commissioners* (1799), 8 T. R. 312; 41 Digest 62, 454; *R. v. Leigh* (1839), 10 A. & E. 398; 41 Digest 53, 388; *R. v. Baker* (1867), L. R. 2 Q. B. 621; 41 Digest 54, 392; *Hudson v. Tabor* (1877), 2 Q. B. D. 290; 44 Digest 82, 640; *Fobbing Sewers Commissioners v. R.* (1886), 11 App. Cas. 449; 41 Digest 62, 452; *L. & N.W. Rail. Co. v. Fobbing Levels Sewers Commissioners* (1896), 66 L. J. (Q. B.) 127; 41 Digest 54, 396.

(*c*) S. 9 (6).

(b) the terms on which it is to be commuted, and (c) the time within which objections may be made (d). [967]

Remedies of the Landowner.—The person under obligation has three courses open, viz. : (i.) he may within one month after the board's notice to commute give notice of objection (e). The Minister then decides whether the commutation shall proceed (f); (ii.) if aggrieved by the amount to be paid for commutation, he may within three months after receiving notification of it, require the matter to be referred to the arbitration of a single arbitrator, appointed, in default of agreement, by the President of the Institution of Civil Engineers (g); and (iii.) if he disputes the existence of the obligation he may have the question determined by the court. [968]

Effect of Commutation.—The sum determined is payable by the owner (h) either by way of a capital sum or a terminable annuity for not exceeding thirty years (i). It is a charge on the land affected (k), and has priority over any other incumbrances created by the owner (l) other than charges under the Improvement of Land Act, 1864 (m). [969]

ACQUISITION OF ACCRETIONS OF LAND

As a result of drainage works, accretions of land may be brought about in connection with the main river (n). If the Minister so certifies, catchment boards may acquire for reclamation purposes, either by agreement or compulsorily, (a) the accretions or the land to which accretions will be added, and (b) such other land as is reasonably required for the reclamation of the accretion, or for the enjoyment thereof when reclaimed (o). In assessing the compensation any increased value accruing by virtue of the drainage works is not to be taken into account (p).

Where a Government grant has been made towards the cost of such works, the Commissioners of Crown Lands are entitled to take over such lands on payment of the sum paid by the catchment board and costs (q). If the board fail to make such transfer the Minister may make an Order vesting the land in the commissioners or their nominee (r). [970]

(d) S. 9 (2); Land Drainage (General) Regulations, 1932 (S.R. & O., 1932, No. 64), Arts. 1, 8.

(e) *Ibid.*

(f) *Ibid.* His decision is final.

(g) S. 9 (7). The arbitrator may confirm, set aside or vary the board's determination.

(h) Notwithstanding any agreement with his lessee to the contrary (s. 9 (3)).

(i) S. 9 (5).

(k) A charge under this section should be registered as a "land charge" under the Land Charges Act, 1925, s. 10 (1), Class A (ii.); 15 Statutes 531. A register of these charges must also be kept by the clerk of the catchment board. A copy of any entry certified by him is receivable in evidence in all legal proceedings (s. 9 (8)).

(l) S. 9 (5).

(m) 10 Statutes 127.

(n) This extends not only to tidal waters, but to accretions owing to drainage works transferred to the board (s. 76 (1)).

(o) S. 76 (1). As to acquisition of land by agreement or compulsorily, see s. 45 and Fourth Schedule, and title DRAINAGE BOARDS. Any agreement or order may provide for the transfer to the board of all liabilities in connection with the land (*ibid.*, sub-s. (3)).

(p) S. 76 (4).

(q) S. 76 (5).

(r) S. 76 (6). For this purpose the Minister is a "competent authority" under the Law of Property Act, 1925, s. 9; 15 Statutes 190.

POWERS AS TO BILLS AND PROVISIONAL ORDERS

A catchment board is empowered to promote and oppose Bills in Parliament, and apply for and oppose applications for Provisional Orders and other Statutory Orders (s). [971]

SERVICE OF NOTICES

All notices under the Act may be served by registered post, or delivery to or at the residence of the person addressed, or, if addressed to the owner or occupier, to some person on the premises, or if there is no such person by fixing it on some conspicuous part of the premises (t). [972]

CROWN AND TIDAL LANDS

The Act applies to land belonging to the Crown, the Duchies of Lancaster and Cornwall or a Government Department (u). Except, however, for work done in maintaining existing works on tidal lands (x) or on land not in the occupation of the Crown, the Duchy of Lancaster, the Duke of Cornwall or a Government Department, the Act does not authorise the doing of any work on or the use of any tidal lands (x) or any lands belonging to the Crown, the Duchy of Lancaster, the Duchy of Cornwall or any Government Department without the consent of the owner of the lands and, in the case of tidal lands, with the consent in addition, of the Board of Trade (y). The work must also be done or the use made of the lands in accordance with approved plans and sections, and subject to the prescribed restrictions and conditions (a). The Act confers no power of levying drainage rates in respect of tidal lands (b). [973]

PROVISIONS OF LOCAL ACTS

All protective provisions of local Acts are preserved, and catchment boards can only exercise their powers subject thereto (c).

By sect. 16 the Lancashire County Council (Drainage) Act, 1921 (d), the West Riding of Yorkshire County Council (Drainage) Act, 1923 (d), and Part III. of the Surrey County Council Act, 1925 (d), are to cease to apply to any part of the area of any catchment board. [974]

FINANCIAL

Expenses of the Board: How Raised.—The expenses (e) of a catchment board are paid out of sums levied (a) upon internal drainage boards, and (b) upon the county and county borough councils in the area in so far as not otherwise met (f). The amount payable is apportioned by the board on the basis of the total rateable value of the areas of the respective councils within the catchment area (g). For this purpose the councils are required to furnish to the board a true and correct statement of such totals (h). [975]

(s) S. 15.

(t) S. 75.

(u) S. 77 (1). As to the Commissioners of Crown Lands, the Commissioners of Works, the Board of Trade and the Duchies of Lancaster and Cornwall, see 7 Halsbury, title "Constitutional Law," pp. 122, 133, 102, 217, 238.

(x) For definition of "tidal lands," see s. 77 (2).

(y) *Ibid.*, proviso (b).

(a) *Ibid.*, proviso (b) (iii.).

(b) *Ibid.*, proviso (c).

(c) S. 66.

(d) 11 & 12 Geo. 5, c. lxxxviii.; 13 & 14 Geo. 5, c. xeviii.; 15 & 16 Geo. 5, c. cxv. See also s. 65 limiting the application of the Act in the Doncaster Drainage District.

(e) See definition in s. 20 (3).

(f) S. 20 (1).

(g) S. 20 (1) (b). If, however, the catchment area is wholly within one administrative county, these expenses are payable by that county council (*ibid.*, sub-s. (1) (a)).

(h) S. 20 (4).

Contributions from Internal Drainage Boards.—The amount to be paid by internal drainage boards is fixed by resolution of the catchment board (*i*). But if there is a “main internal drainage district” in the area, comprising two or more “minor internal drainage districts,” the main internal district board cannot be called upon to contribute as well as the boards of the minor districts. The catchment board has, however, the option of requiring payment direct from the main internal board of the total amount payable by the minor boards (*k*). [976]

Appeal against Assessments.—An internal board, if aggrieved by the amount of the contribution, has a right of appeal to the Minister within six weeks from receiving notice of the resolution (*l*). A similar right of appeal is given to county and county borough councils on the grounds of inadequacy of the contributions required from an internal drainage board, or that the contribution to the catchment board is excessive (*m*). The Minister may (after holding a public local inquiry if he thinks fit) make such Order in the matter as he deems just (*n*). On making his Order the Minister is required to present to Parliament a report giving particulars of the appeal and the reasons for his decision (*o*). [977]

Precepts.—The contributions from councils and internal drainage boards are demanded by precept (*p*). With the precept the board must send a statement of (a) the purposes to which the sum is to be applied, and (b) the basis of the calculation (*q*). Precepts are enforceable by *mandamus* (*r*); but there is no obligation upon any council or internal drainage board to pay the precept until they receive the above statement (*s*).

The aggregate amount which may be demanded from a county or county borough council in any financial year must not exceed the estimated produce of a rate of twopence in the pound, levied on the part of the county or county borough which is within the catchment area, unless the majority of the members appointed by such councils consent (*t*). And if the catchment board have borrowed or are about to borrow money under the Act, a majority of the members in question may agree to an increase of the amount for the period of the currency of the loan (*u*). [978]

Grants from Public Funds.—The Minister is authorised to make grants towards expenditure incurred in the improvement of existing works and the construction of new works (*a*). Before a grant is made, the Minister must be satisfied that the work is being properly carried out in accordance with plans and sections approved by him (*b*). He

(*i*) S. 21 (1).

(*k*) S. 21 (2). The main internal board recoup themselves by levying a rate in the minor districts.

(*l*) S. 21 (5) (a). The catchment board may act on the resolution notwithstanding that the time for appealing has not expired, or that an appeal is pending, subject to any adjustments being subsequently ordered (*ibid.*, sub-s. (4)).

(*m*) S. 21 (5) (b).

(*n*) S. 21 (5).

(*o*) S. 21 (6). Compliance with the Minister's Order is enforceable by *mandamus* (*ibid.*, sub-s. (7)).

(*p*) S. 22 (1).

(*q*) S. 22 (3). The form of this statement is prescribed in the Land Drainage (Form of Precept) Regulations (S.R. & O., 1930, No. 1132).

(*r*) S. 22 (5).

(*s*) S. 22 (4).

(*t*) S. 22 (2).

(*u*) *Ibid.*

(*a*) S. 55. For definitions of these works, see s. 34 (1) (b), (c).

(*b*) S. 55 (1) (a).

may also make advances towards expenditure to be incurred on approved new works (c). [979]

Borrowing Powers.—A catchment board may, with the sanction of the Minister (exercised in consultation with the Minister of Health) (d), borrow or re-borrow money on the security of their property, rates and revenues, for the purpose of defraying costs, charges and expenses incurred by them in the execution of their duties or discharging an existing loan (e). The maximum loan period is fifty years (f). The Public Works Loan Commissioners are authorised to make loans for any works for which a loan sanction is obtained (g). The L.G.A., 1933, does not affect these borrowing powers. [980]

LONDON

The Land Drainage Act, 1930, applies only to that portion of the administrative county of London which for the time being is included in the River Lee catchment area (h), and that part of the watershed of the River Thames which is above Teddington Lock is alone entered in the First Schedule to the Act as a catchment area. Moreover the provisions of the Act with respect to the constitution and membership of drainage boards for catchment areas do not apply in relation to the upper Thames catchment area (i).

The Conservators of the River Thames, as reconstituted by the Act (k), constitute the Catchment Board for that catchment area, but these provisions of the Act of 1930 were repealed by the Thames Conservancy Act, 1932 (l), and re-enacted in that Act.

The Catchment Board of the Lee catchment area is a new body called the Lee Conservancy Catchment Board, consisting of the persons who are for the time being members of the Lee Conservancy Board, together with six additional members, one to be appointed by the Minister of Agriculture and Fisheries, one by the L.C.C., and two each by the councils of the counties of Essex and Middlesex (sect. 80). [981]

(c) S. 55 (2).

(e) S. 46 (1).

(g) S. 46 (5).

(i) S. 79 (1).

(l) 22 & 23 Geo. 5, c. xxxvii.

(d) S. 46 (1) (6).

(f) S. 46 (2).

(h) S. 78.

(k) S. 79 (2) and Sched. VI.

CATTLE ON HIGHWAYS

	PAGE		PAGE
DEFINITION - - -	460	CIVIL ACTIONS - - -	462
STATUTORY OFFENCES - - -	461	LONDON - - -	463
BYE-LAWS - - -	462		

See also titles : ANIMALS, KEEPING OF ;
HIGHWAY NUISANCES ;
LONDON ROADS AND TRAFFIC ;
ROAD TRAFFIC.

Definition.—The word “cattle” is defined differently in various Acts. Neither the Highway Act, 1835 (a), nor the Highway Act, 1864 (b), contains a general definition of the expression, but sect. 25 of the latter Act refers to horses, mares, geldings, bulls, oxen, cows,

heifers, steers, calves, mules, asses, sheep, lambs, goats, kids or swine, and in the Town Police Clauses Act, 1847, sect. 4 (c), "cattle" is defined as including horses, asses, mules, sheep, goats and swine. [982]

Statutory Offences.—Sect. 72 of the Highway Act, 1835 (d), imposes a penalty for wilfully riding upon any footpath or causeway, by the side of any road, made or set apart for foot passengers; or for wilfully leading or driving any horse, ass, sheep, mule, swine or cattle upon any such footpath or causeway, or tethering any horse, ass, mule, swine or cattle on any highway, so as to suffer or permit the tethered animal to be thereon. It will be noticed that "sheep" are not mentioned in this last provision. [983]

Under sect. 25 of the Highway Act, 1864 (e), if any of the animals therein referred to are found straying on or lying about any highway or across or by the sides of it, unless it passes over any common or waste or unenclosed ground, the owner is liable to a penalty not exceeding five shillings, to be recovered in a summary manner, together with the reasonable expense of removing the animal from the highway to the fields or stable of the owner, or to the common pound, if any, of the parish, or to such other place as may be provided for the purpose. No owner can be required to pay more than thirty shillings over and above the reasonable expenses, including the usual fees and charges of the authorised keeper of the pound, and nothing in the Act is to be deemed to take away any right of pasturage which may exist on the sides of the highway.

The section creates two separate offences: allowing animals to stray, and allowing them to lie about the highway. Animals are not "straying" if they have some one with them and in charge of them (f). The latter offence is not excused by the owner putting a person in charge of the animals (g); but *bona fide* resting for a reasonable time (h) would not constitute an offence. A person who has the right of pasturage on the roadside wastes is not by this section exempted, if he allows cattle to stray on the highway (i). [984]

Sect. 75 of the Highway Act, 1835 (k), and sects. 24 to 27 of the Town Police Clauses Act, 1847 (l), deal with the impounding of cattle, the sale of cattle impounded and pound-breach. The Protection of Animals Act, 1911 (m), ensures that there must be sufficient food and water provided. The pound must be in a fit and proper state (n), and within a reasonable distance from the animals (o). The council of a borough or urban district may provide a pound under sect. 27 of the Act of 1847 (p). (See title THE POUND.) [985]

As to cattle in the streets of a borough or urban district, sect. 28 of the Town Police Clauses Act, 1847 (p), contains a long catalogue of acts in a street which are made illegal, but in each instance, to create

(c) 13 Statutes 602.

(d) 9 Statutes 86.

(e) *Ibid.*, 149.

(f) *Morris v. Jeffries* (1866), L. R. 1 Q. B. 261; 26 Digest 429, 1488; *Sherborn v. Wells* (1863), 32 L. J. (M. C.) 179; 26 Digest 429, 1487.

(g) *Lawrence v. King* (1868), L. R. 3 Q. B. 345; 26 Digest 429, 1489.

(h) *Ibid.*; and *Horwood v. Goodall* (1872), 36 J. P. 486; 26 Digest 430, 1492.

(i) *Golding v. Stocking* (1869), L. R. 4 Q. B. 516; 26 Digest 429, 1490; *Bothamley v. Danby* (1871), 24 L. T. 656; 26 Digest 430, 1494.

(k) 9 Statutes 90.

(l) 19 Statutes 37—38.

(m) S. 7; 1 Statutes 377.

(n) *Bignell v. Clarke* (1860), 5 H. & N. 485; 18 Digest 445, 1819.

(o) *Coaker v. Willcocks*, [1911] 2 K. B. 124; 18 Digest 341, 758.

(p) 19 Statutes 38.

an offence, the act must be done "in any street to the obstruction, annoyance or danger of the residents or passengers." It is thus an offence in a street to expose any horse or other animal for show, hire or sale (except in a market or fair lawfully appointed), to shoe, bleed or farry any horse or other animal (except in case of accident), or to slaughter or dress any cattle, except cattle over-driven which have met with an accident.

It is also an offence under the section in any street to urge any dog or other animal to attack or worry any other animal, or to ride furiously any horse or drive furiously any cattle, and for the purpose of the offences mentioned in this sentence (and some other offences) any place of public resort or recreation ground belonging to, or under the control of, the local authority and any unfenced ground adjoining or abutting upon any street is by sect. 81 of the P.H.A. Amendment Act, 1907 (*g*), to be deemed to be a street. [986]

By sect. 22 of the Town Police Clauses Act, 1847 (*r*), the council have power to regulate the route of persons driving cattle during divine service.

Some authorities have obtained powers in local Acts to restrict the driving of cattle to certain streets to be specified in bye-laws, and enabling penalties to be recovered for breach of the restrictions. [987]

Under sect. 18 of the P.H.A. Amendment Act, 1907 (*s*), a local authority may grant passage across a paved footway for cattle subject to conditions, and a similar provision is inserted in some town planning schemes with the words "or grass margin" added, and by sect. 80 (*t*) the local authority may by order prescribe the streets through which cattle may be led or driven, between the hours of 9 a.m. and 9 p.m., and the manner in which they shall be led or driven. [988]

It should be noted that while sects. 21 to 29 of the Town Police Clauses Act, 1847, were applied to all boroughs and urban districts by sect. 171 of the P.H.A., 1875 (*a*), these provisions are not in force in a rural district unless they have been therein declared to be in force by an order under sect. 276 of that Act. Similarly the provisions of the P.H.A. Amendment Act, 1907, previously referred to, are in force only in a borough or district to which the particular section has been, by an order, extended, although the powers of sect. 18 of the Act may be exercised by county councils, as respects county roads, under sects. 30 and 31 of the L.G.A., 1929, and Sched. I. to that Act (*b*), without the necessity of an order, and in rural districts are exercisable exclusively by the county council. [989]

Bye-laws.—The H.O. have issued model bye-laws under sect. 23 of the Municipal Corporations Act, 1882 (now replaced by sect. 249 of the L.G.A., 1933 (*c*)), requiring bulls to be under proper control when led through streets and prohibiting the keeping of bulls in fields through which a public footpath runs. [990]

Civil Actions.—A landowner owes no general duty to prevent domestic animals from straying from his land on to a highway (*d*), and he is not responsible for damage to third parties if they do so. The plaintiff must show negligence as well as trespass, and it is not even *prima facie* evidence of negligence that cattle are straying unattended

(*g*) 13 Statutes 940.

(*s*) 13 Statutes 917.

(*a*) *Ibid.*, 696.

(*c*) 26 Statutes 439.

(*d*) *Heath's Garage v. Hodges*, [1916] 2 K. B. 370 ; 2 Digest 234, 226.

(*r*) 19 Statutes 36.

(*t*) *Ibid.*, 940.

(*b*) 10 Statutes 904, 975.

on a highway (*e*). It is not the natural tendency of animals to obstruct, but rather to avoid traffic, and it is not natural for a horse to kick a man (*f*); consequently knowledge of vice must be proved to establish negligence. As regards the owner of the soil of the highway, there is a liability to prevent trespass, and to allow a horse to stray at large on a highway is such a trespass, the rights of the owner of the animal being limited to passage and repassage (*f*), and it is possible that an indictment for nuisance would lie for obstructing the highway. Numerous cases have been decided on the question of liability for damage done by animals on the highway (*g*). As to liability in regard to a vicious horse put in a field through which people were in the habit of walking, see *Lowery v. Walker* (*h*).

See also under titles, HORSES, MULES AND ASSES; HIGHWAY NUISANCES; and ROAD TRAFFIC. [991]

London.—Sect. 54 of the Metropolitan Police Act, 1839 (*i*), makes it an offence for any person to turn loose any horse or cattle, or suffer to be at large any unmuzzled ferocious dog, or set on or urge any dog or other animal to attack, worry, or put in fear any person, horse, or other animal; or by negligence or ill-usage in driving cattle to cause any mischief to be done by such cattle, or in any wise to misbehave himself in the driving, care or management of such cattle, and also for any person, not being hired or employed to drive such cattle, wantonly and unlawfully to pelt, drive, or hunt any such cattle.

It is also an offence to feed or fodder, shoe, bleed or clean, exercise, or break any horse or animal, or to lead or ride a horse or other animal or fasten the same so that it can stand across or upon any footway. The penalty is not more than 40s. within the limits of the metropolitan police district.

Sect. 51 of the 1839 Act empowers the commissioners of police to regulate the route and conduct of persons driving cattle, sheep, pigs or other animals during the hours of divine service on Sundays, Christmas Day, Good Friday, or any day appointed for a public fast or thanksgiving.

Sect. 7 of the Metropolitan Streets Act, 1867 (*k*), provides that no person shall drive or conduct any cattle through any street within a radius of six miles from Charing Cross between the hours of ten in the morning and seven in the evening, except with the permission of the Commissioner of Police. Any person driving or conducting cattle in contravention of this section is liable to a penalty not exceeding ten shillings for each head of cattle so driven or conducted. The Islington Parish Act, 1857, sect. 3 (*l*), has a similar provision.

The Metropolitan Streets Act, 1867, sect. 3 (*m*) defines the word "cattle" to include bull, ox, cow, heifer, calf, sheep, goats and swine, also horses, mules and asses, when led in a string or loose.

By sect. 10 and para. 11 of the Third Schedule to the London Traffic Act, 1924 (*n*), the M. of T. may by regulations prescribe the conditions subject to which, and the times at which, horses, cattle, sheep and other

(*e*) *Jones v. Lee* (1911), 106 L. T. 123; 2 Digest 234, 224.

(*f*) *Cox v. Burbidge* (1863), 32 L. J. (C. P.) 90; 2 Digest 233, 218.

(*g*) See English and Empire Digest, Vol. 2, pp. 233—235.

(*h*) [1911] A. C. 10; 2 Digest 241, 261.

(*i*) 19 Statutes 119.

(*k*) *Ibid.*, 155.

(*l*) 20 & 21 Vict. c. xxi.

(*m*) 19 Statutes 154.

(*n*) 19 Statutes 183, 191. See also the amendment of s. 10 made by s. 63 of the London Passenger Transport Act, 1933.

animals may be led or driven on streets within the metropolitan police district and the city of London.

Sect. 109 of the Metropolitan Paving Act, 1817 (*o*), provides for the impounding of straying beasts, cattle, horses, or any animals.

By sect. 17 (1) (*b*) of the P.H. (London) Act, 1891 (*p*), no person shall permit swine to stray or go about in any street or public place, and any swine found so straying may be seized and removed by any constable. [992]

(*o*) 11 Statutes 873.
(*p*) 11 Statutes 1035.

CELLAR DWELLINGS

	PAGE		PAGE
MODERN CELLAR DWELLINGS	- 464	UNDERGROUND ROOMS USED AS	
ANCIENT CELLAR DWELLINGS	- 464	SLEEPING-PLACES	- 465
PENALTY	- 465	LONDON	- 466
CLOSING ORDER	- 465		

See also title : INSANITARY HOUSES.

Apart from local Acts the statutory provisions on the subject of cellar dwellings are contained in sects. 71—75 of the P.H.A., 1875 (*a*), and apply equally to boroughs, urban and rural districts.

For the purposes of these sections the term “cellar” includes any vault or underground room, and any cellar in which any person passes the night is, by sect. 74 of the Act, to be deemed to be “occupied as a dwelling.”

Two classes of cellar dwellings are distinguished and dealt with separately, the occupation of “modern” ones being absolutely prohibited, that of “ancient” ones being prohibited unless they satisfy certain requirements. [993]

Modern Cellar Dwellings.—Sect. 71 renders it unlawful to let or occupy or suffer to be occupied separately as a dwelling any cellar which (*a*) has been built or rebuilt since the passing of the Act (August 11, 1875), or (*b*) was not lawfully so let or occupied at that date. Sect. 67 of the P.H.A., 1848 (repealed by the Act of 1875), prohibited such letting or occupation except in the case of cellars which in 1848 were so let and occupied, and which conformed to certain requirements now re-enacted by sect. 72, *infra*; the result is, therefore, that the only cellar dwellings exempt from the absolute prohibition of sect. 71 are those built before 1848 (and not since rebuilt), which were lawfully let or occupied in 1875 as conforming to the requirements imposed by the Act of 1848, and continued by sect. 72. [994]

Ancient Cellar Dwellings.—Sect. 72 renders it unlawful to let or occupy or suffer to be occupied separately as a dwelling any cellar whatsoever, unless the following requirements are complied with, viz. :

- (i.) Unless the cellar is in every part thereof at least seven feet in height, measured from the floor to the ceiling thereof, and

- is at least three feet of its height above the surface of the street or ground adjoining or nearest to the same ; and
- (ii.) Unless there is outside of and adjoining the cellar and extending along the entire frontage thereof, and upwards from six inches below the level of the floor thereof up to the surface of the said street or ground, an open area of at least two feet and six inches wide in every part ; and
 - (iii.) Unless the cellar is effectually drained by means of a drain the uppermost part of which is one foot at least below the level of the floor thereof ; and
 - (iv.) Unless there is appurtenant to the cellar the use of a water-closet, earth-closet or privy and an ashpit, furnished with proper doors and coverings, according to the provisions of the P.H.A., 1875 ; and
 - (v.) Unless the cellar has a fireplace with a proper chimney or flue, and an external window of at least nine superficial feet in area clear of the sash frame, and made to open in a manner approved by the surveyor (except in the case of an inner or back cellar let or occupied along with a front cellar as part of the same letting or occupation, in which case the external window may be of any dimensions not being less than four superficial feet in area clear of the sash frame).

But in any area adjoining a cellar there may be steps necessary for access to such cellar, if the same be so placed as not to be over, across or opposite to the said external window, and so as to allow between every part of such steps and the external wall of such cellar a clear space of six inches at the least, and over or across any such area there may be steps necessary for access to any building above the cellar to which such area adjoins, if the same be so placed as not to be over, across or opposite to any such external window. [995]

Penalty.—Any person who lets, occupies, or knowingly suffers to be occupied for hire or rent any cellar contrary to the provisions of the Act is liable for every such offence to a penalty not exceeding 20s. for every day during which the same continues to be so let or occupied after notice in writing from the local authority in this behalf (sect. 73).

It will be noted that sect. 73 applies only where there is a letting or occupation “for hire or rent,” and that the expression “suffers to be occupied” is qualified by the word “knowingly” ; therefore, there may be an infraction of sects. 71 or 72 to which sect. 73 does not apply, and for which the only remedy will be by indictment for common law misdemeanor in disobeying a statute. [996]

Closing Order.—Where two convictions against the provisions of any Act (including, presumably, local Acts) relating to the occupation of a cellar as a separate dwelling place have taken place within three months (whether the persons so convicted were or were not the same), a court of summary jurisdiction may direct the closing of the premises so occupied for such time as it may deem necessary, or may empower the local authority permanently to close the same, and to defray any expenses incurred by them in the execution of this provision (sect. 75). [997]

Underground Rooms used as Sleeping-Places.—In connection with the subject of this title, reference may be made to the provisions of L.G.L. II.—30

sect. 18 of the Housing Act, 1925 (b), as amended by sects. 20, 63 and 64 of the Housing Act, 1930 (c), with respect to underground rooms. Under those provisions, a room habitually used as a sleeping-place, the surface of the floor of which is more than three feet below the surface of the part of the street adjoining or nearest the room, or more than three feet below any ground within nine feet of the room, shall be deemed to be unfit for human habitation, if the room either : (a) is not on an average at least seven feet in height from floor to ceiling ; or, (b) does not comply with such regulations as the local authority, with the consent of the Minister of Health, may prescribe for securing proper ventilation and lighting, and protection against dampness, effluvia, or exhalation (sect. 18 of Act of 1925). The Minister of Health has issued a model series of regulations relating to underground rooms under the above provision (No. XXII.). A closing order could prohibit the use of the room for purposes of a sleeping-place, until it has been rendered fit for human habitation, but the order would not prevent the room being used for purposes other than those of a sleeping-place (sect. 20 of Act of 1930). [1998]

London.—The occupation of underground rooms for sleeping purposes is governed by sect. 96 of the P.H. (London) Act, 1891 (d), sect. 18 of the Housing Act, 1925 (e); and sect. 20 of the Housing Act, 1930 (f). As far as can be ascertained, relatively few underground rooms in the administrative county of London are used for sleeping purposes. There are, however, many such rooms used as living rooms.

Sect 96 of the P.H. (London) Act, 1891, provides (*inter alia*) that any underground room which was not let or occupied separately as a dwelling before the passing of the Act shall not be so let or occupied unless it possesses a number of requisites set out in the section. A certain height is prescribed from floor to ceiling and the room must have at least three feet of its height above the surface of the street or ground adjoining or nearest to it. It must be effectually secured against dampness from the soil, drained and ventilated. By sub-sect. (3) of the section, these provisions were applied, as from July 1, 1892, to underground rooms let or occupied separately as dwellings before the passing of the Act (August 5, 1891), but the sanitary authority (*viz.*, the borough council or the common council of the City of London) were allowed either by general regulations or in any particular case to dispense with any of these requisites which was not required prior to 1891, and which would involve structural alterations if, in their opinion, such dispensation could safely be permitted, and the owner of any room who might feel aggrieved by not being allowed any dispensation or modification of the requirements, was given an appeal to the M. of H. Where it is shown that any person uses an underground room as a sleeping-place, it lies on the defendant to show that the room is not separately occupied as a dwelling. The expression "underground room" includes any room of a house the surface of the floor of which room is more than three feet below the surface of the footway of the adjoining street, or of the ground adjoining or nearest to the room.

Owners and other persons having control of underground rooms are communicated with when such rooms are illegal for separate occupation as dwellings under the P.H. (London) Act, 1891, or where

(b) 13 Statutes 1013.

(d) 11 Statutes 1077.

(f) 23 Statutes 413.

(c) 23 Statutes 413, 436.

(e) 13 Statutes 1013.

rooms do not comply with the regulations as to underground rooms used for sleeping purposes. Written undertakings have been given under the Housing Act, 1930, sect. 19 (g), by owners, and also in many cases by tenants sub-letting, that rooms in the basements which contravened the Act would not be relet or used as sleeping-places. [999]

(g) 23 Statutes 412.

CELLAR FLAPS

See ROAD PROTECTION.

CELLULOID

See CINEMATOGRAPHS.

CEMENT WORKS

See ALKALI, ETC., WORKS.

CEMETERIES

	PAGE		PAGE
PRELIMINARY - - - -	468	Introductory - - - -	479
I. CEMETERIES UNDER P.H. (IN-		Acquisition of Land - - -	479
TERMENTS) ACT, 1879 - - -	469	Chapels - - - -	479
Power to Provide - - - -	469	Enclosure of the Cemetery -	479
Application of the Cemeteries		Roads, Drainage, etc. - - -	479
Clauses Act, 1847 - - - -	470	Consecration - - - -	480
Acquisition or Appropriation of		Removal of Bodies - - - -	480
Land - - - -	471	Chaplain, Burial Service - -	480
Sale or Letting of Surplus Land	472	Clerk, Gravediggers, etc. -	480
Chapels - - - -	473	Exclusive Rights, Monuments,	
Loans for Cemeteries - - -	474	Inscriptions, etc. - - - -	481
Control by the Ministry - - -	474	Payments to Incumbents and	481
Maintenance of Cemetery - -	475	Parish Clerks - - - -	481
Bye-laws and Regulations - -	476	Protection of the Cemetery -	482
Fees - - - -	477	Rating - - - -	482
Chaplains and other Officers -	478	Registration of Burials - - -	482
Monumental Inscriptions - -	478	FORM OF GRANT OF RIGHT OF	
Protection of the Cemetery - -	478	BURIAL - - - -	482
Rating - - - -	479	FORM OF ASSIGNMENT OF RIGHT OF	
II. THE CEMETERIES CLAUSES ACT,		BURIAL - - - -	483
1847, AS APPLYING TO CEME-		LONDON - - - -	483
TERY COMPANIES - - - -	479		

See also titles :

BURIAL AND CREMATION ; * BURIALS AND BURIAL GROUNDS ; † BURIAL AUTHORITIES ; CEMETERY SUPERINTENDENT ; CONSECRATION ;	CORPSES ; CREMATION ; MORTUARIES ; RATING OF SPECIAL PROPERTIES.
---	---

* For general introduction to whole subject and practice from the point of view of private persons.

† For questions of practical administration applying also to cemeteries.

PRELIMINARY

In this article the term "cemeteries" is used as meaning cemeteries established under the P.H. (Interments) Act, 1879 (*a*), or under a local Act incorporating the Cemeteries Clauses Act, 1847 (*b*), as distinct from burial grounds provided by burial boards or other authorities under the Burial Acts, 1852 to 1906 (*c*). For the provision of burial grounds under the Burial Acts and their maintenance, see title BURIALS AND BURIAL GROUNDS.

In practice, the term "cemeteries" is often used loosely to include both classes of graveyards mentioned above, and also private cemeteries. Where any of the matter contained in the title BURIALS AND BURIAL GROUNDS applies equally to cemeteries, a reference will be made to the corresponding division of that article. [1000]

Provided no nuisance is thereby caused and no Order in Council is in force in a parish prohibiting the opening of a new burial ground

in the parish without the consent of the M. of H., any person or body of persons may provide and maintain a cemetery for the burial of the dead, and special grounds for the interment of deceased members of religious orders are occasionally provided, without an express statutory authority, though less frequently than formerly. But if the ground is within the metropolis, or within two miles of it, the approval of the M. of H. is required by sect. 9 of the Burial Act, 1852 (*d*), although as mentioned on p. 324 of the title BURIALS AND BURIAL GROUNDS, burial grounds for Quakers and Jews seem to be excepted from this requirement. [1001]

Most of the existing cemeteries not maintained by local authorities have been provided by cemetery companies, there being a tendency for the small denominational graveyard to disappear, due to some extent to the operations of the Burial Laws Amendment Act, 1880 (*e*), under which a body can be buried in consecrated ground without, or in unconsecrated ground with, the burial service of the Church of England. [1002]

I. CEMETERIES UNDER THE PUBLIC HEALTH (INTERMENTS) ACT, 1879 (*f*)

Power to Provide.—By sect. 2 of this Act, the provisions of the P.H.A., 1875 (*g*), as to mortuaries are extended to cemeteries, and the purposes of the Act of 1875 are extended to include the acquisition, construction and maintenance of a cemetery. It follows that any borough council or district council may provide a cemetery, and if required by the M. of H. must do so. The cemetery may be constructed either within or without the borough or district (*h*), but in the latter event, advertisements must be published and notices served by the council; and upon any owner, lessee or occupier affected objecting to the proposal, the sanction of the Minister must be obtained (*i*). The council may accept donations of land or gifts of money or other property for enabling them to acquire, construct or maintain a cemetery (*k*). Though the provisions of the 1875 Act relating to mortuaries are contained in two sections, the following portion of sect. 141 is alone capable of application to a cemetery, namely, "Any local authority may, and if required by the Local Government Board (*l*) shall, provide and fit up a proper place for the reception of dead bodies before interment (in this Act called a mortuary) and may make bye-laws with respect to the management and charges for the use of the same." [1003]

The P.H. (Interments) Act, 1879, does not apply to London. [1004]

In a circular issued by the Local Government Board (*m*) soon after the passage of the Act of 1879, the following conditions were mentioned as indicating the desirability of the provision of a cemetery by a council :

- " 1. Where in any burial ground which remains in use there is not proper space for burial, and no other suitable burial ground has been provided ;

(*d*) 2 Statutes 192.

(*e*) *Ibid.*, 242.

(*f*) 13 Statutes 796.

(*g*) *Viz.* ss. 141—142 ; 13 Statutes 682.

(*h*) 1879 Act, s. 2 ; *ibid.*, 796.

(*i*) P.H.A., 1875, ss. 32—34 ; *ibid.*, 639, 640.

(*k*) P.H. (Interments) Act, 1879, s. 2 (3) ; *ibid.*, 796.

(*l*) Now Minister of Health.

(*m*) Dated August 19, 1879. See Brooke Little's Law of Burials, 3rd ed., pp. 714—719.

2. Where the continuance in use of any burial ground (notwithstanding there may be such space) is by reason of its situation in relation to the water supply of the locality, or by reason of any circumstances whatsoever, injurious to the public health;
3. Where, for the protection of the public health, it is expedient to discontinue burials in a particular town, village, or place, or within certain limits." [1005]

The provision of a cemetery under the Act of 1879 is often preferred to an adoption of the Burial Acts, 1852 to 1906, because those Acts are full of pitfalls to persons administering them.

As the Act of 1879 is to be construed as one with the P.H.A., 1875, land may be acquired and money borrowed for the provision of a cemetery under Parts VII. and IX. of the L.G.A., 1933 (*II*), or, before June 1, 1934, under the Act of 1875. The appropriate provisions are described later in this article.

A cemetery may be provided under the Act of 1879 which will serve a portion only of a borough or urban district. Logically the area not served by the cemetery should be exempted from contributing to the rate from which the expenditure is defrayed by dividing the borough or urban district under sect. 211 (4) of the P.H.A., 1875 (*n*), but cemeteries in towns usually become self-supporting, and this course is rarely adopted. Apparently a R.D.C. may provide a cemetery to serve one or more contributory places of their rural district. [1006]

The expenses of the provision and maintenance of a cemetery will be defrayed as part of the expenditure of the council under the P.H.A. If a cemetery is provided by a R.D.C. to serve a part only of their district, the expenses may be declared by an order of the M. of H. under sect. 190 (8) of the L.G.A., 1933 (*o*), or, before June 1, 1934, under sect. 229 of the P.H.A., 1875 (*oo*), made on the application of the council, to be special expenses chargeable on the contributory place or places for which the cemetery is provided. [1007]

The councils of several boroughs and urban districts have provided a cemetery under the Act of 1879 in addition to a burial ground maintained by them under the Burial Acts, 1852 to 1906, and apparently no great difficulty has arisen from this duplication of functions. [1008]

Application of the Cemeteries Clauses Act, 1847.—In order to make further provision for the proper maintenance and management of a cemetery, sect. 3 of the P.H. (Interments) Act, 1879 (*p*), incorporates with that Act the Cemeteries Clauses Act, 1847 (*q*), and the circular of the Local Government Board (*r*) summarised the provisions of the Act of 1847. That Act was designed for cemeteries provided by cemetery companies, and some of its provisions are not entirely suitable to local authorities.

A few of the provisions originally incorporated with the Act of 1879 have since been modified by the Burial Act, 1900 (*s*), which extends, by reason of the definition in sect. 11 of "burial authority," to a local authority providing a cemetery under the Act of 1879, as well as to an authority under the Burial Acts. Thus, the obligation to build a chapel within the consecrated part of such a cemetery is repealed by sect.

(*II*) 26 Statutes 391, 412.

(*o*) 26 Statutes 409.

(*p*) *Ibid.*, 796.

(*r*) August 19, 1879. See *ante*, p. 469.

(*n*) 18 Statutes 715.

(*oo*) 18 Statutes 720.

(*q*) 2 Statutes 255.

(*s*) 2 Statutes 248.

2 (4) of the Act of 1900 (*t*), and the local authority *may* erect a chapel at their own cost on a part of the cemetery not consecrated or set apart for the use of any particular denomination, but such a chapel is not to be consecrated or reserved for the exclusive use of any denomination (*u*). Denominational chapels (if any) must be erected, furnished and maintained at the request and cost of residents belonging to the particular denomination for which the building is provided (*a*).

Sect. 10 of the Cemeteries Clauses Act, 1847 (*b*), has also been amended by sect. 2 of the Burial Act, 1906 (*c*). Sect. 10 provided that no part of the cemetery should be constructed nearer to any dwelling-house than 200 yards, except with the written consent of the owner, lessee and occupier of the house, but the Act of 1906 substituted in this enactment 100 yards for 200 yards. It will be seen that this provision differs from sect. 9 of the Burial Act, 1855 (see p. 326, *ante*), in referring to the construction of the cemetery instead of the use of land for burials. The power of the local authority to appoint a chaplain for a cemetery (*d*) was repealed by sect. 7 of the Burial Act, 1900 (*e*).

The provisions of the Act of 1847, which apply to a cemetery maintained by a company under a local Act, are summarised on pp. 479—482, *post*. [1009]

Acquisition or Appropriation of Land.—As to the practical considerations in connection with the choice of land for a cemetery, see the title BURIALS AND BURIAL GROUNDS, "Selection of a New Burial Ground," at p. 332, *ante*.

Provisions for the acquisition, including the compulsory acquisition, of land for the establishment of cemeteries are contained in the L.G.A., 1933 (*f*). Under this Act the councils of boroughs and districts may purchase land by agreement (*g*), whether within or without their area, for the purposes of any of their functions under a public Act, may acquire land in advance of requirements (*h*), and may be authorised by the M. of H. to purchase compulsorily any land, whether situate within or without the area of the local authority for any of the purposes of the P.H.A., 1875—1932 (*i*). Where a council has now power to acquire land compulsorily under sect. 176 of the P.H.A., 1875, the provisions of sect. 160 of the L.G.A., 1933 (*j*), will apply.

As, however, no part of the P.H. (Interments) Act, 1879, is repealed by the L.G.A., 1933, it will still be necessary, if the land is not within the borough or district, that sect. 2 (2) of the Act of 1879 (*k*) should be complied with and that advertisements should be published by the council and notices served on the owners, lessees and occupiers of the land proposed to be acquired for a cemetery. This course must be taken even where it is proposed to buy the land compulsorily and the notices mentioned in the following paragraph have to be served. [1010]

(*t*) 2 Statutes 249.

(*u*) Burial Act, 1900, s. 2 (1); 2 Statutes 248.

(*a*) *Ibid.*, s. 2 (2); *ibid.*, 248.

(*b*) *Ibid.*, 258.

(*c*) *Ibid.*, 254.

(*d*) See s. 27 of the Cemeteries Clauses Act, 1847; 2 Statutes 261.

(*e*) 2 Statutes 251.

(*f*) Part VII., ss. 156—179; 26 Statutes 391. These sections, as from June 1, 1934, replace those of the P.H.A., 1875, dealing with the same subjects.

(*g*) *Ibid.*, s. 157; 26 Statutes 391.

(*h*) *Ibid.*, s. 158; *ibid.*, 392.

(*i*) *Ibid.*, s. 159 (2); *ibid.*, 392.

(*j*) *Ibid.*, 393.

(*k*) 13 Statutes 796.

Under sect. 160 of the L.G.A. (*kk*), 1933, the procedure for the compulsory acquisition of land for a proposed cemetery is as follows. The council must publish in one or more of the local newspapers circulating in the locality in which the land proposed to be purchased is situate, a notice describing the land, and stating the purpose for which it is required. Notice must then be served on every owner, lessee and occupier (except tenants for a month or less) of the land proposed to be purchased, indicating in each case the particular land, and the purpose for which it is required, and stating that the council propose to request the M. of H. to make a provisional order empowering them to purchase the land compulsorily, and specifying the time within which, and the manner in which, objections can be made to the proposed order (*l*). On compliance with the above provisions the local authority may request the Minister to make a provisional order empowering them to purchase the land compulsorily. If no objections are made, or those made are withdrawn, then the Minister, if satisfied that the proper notices have been published and served, may make the order, but in any other case, before making the order, he must cause a local inquiry to be held, unless he is satisfied that the objection relates to a matter which can be dealt with by the official arbitrator (*e.g.* the price to be paid for the land). A copy of the provisional order must be served upon each person on whom a notice has already been served, and the order is then submitted in a bill for confirmation by Parliament.

Land not required for the purposes for which it was acquired or has been appropriated, may be appropriated for any other purpose approved by the Minister for which the council are authorised to acquire land, subject to certain conditions (*m*), one of which is that a cemetery shall not be constructed on any land so appropriated, unless after local inquiry and consideration of any objections made by persons affected, the Minister, subject to such conditions as he thinks fit, authorises the construction of the cemetery on the land. Sect. 114 of the Education Act, 1921 (*n*), also contains a similar provision admitting the appropriation as a cemetery of land held by a local education authority. [1011]

Sale or Letting of Surplus Land.—Sect. 165 of the L.G.A., 1933 (*nn*), allows a borough or district council, with the consent of the M. of H., to sell any land which is not required for the purpose for which it was acquired or is being used, or to exchange land for other land. A council may also let any land, without the Minister's consent, for a term not exceeding 7 years, or with his consent for any term (*o*). [1012]

But the provisions of the L.G.A., 1933, as to appropriation, sale or letting of land, must be read as respects land acquired for the purposes of a cemetery and set apart for burials, as subject to certain restrictions imposed by other enactments. In the first place, land which has been consecrated, or actually used for the burial of the dead, cannot be sold, disposed of, or used for any other purpose than that of a cemetery (*p*), though a local authority may, for the purposes of the

(*kk*) 26 Statutes 393.

(*l*) The form of this notice is prescribed by the L.G. (Compulsory Purchase) Regulations, 1934; S.R. & O., 1934, No. 363.

(*m*) L.G.A., 1933, s. 163 (1); 26 Statutes 396; see also title CONSECRATION.

(*n*) 7 Statutes 191.

(*nn*) 26 Statutes 397.

(*o*) L.G.A., 1933, s. 164; 26 Statutes 397.

(*p*) See Cemeteries Clauses Act, 1847, s. 9; 2 Statutes 258.

Open Spaces Act, 1906 (*q*), acquire the freehold of, or a limited estate in, or easement in or over, any burial ground within its district or not, and may undertake the control and management of the same (*r*). Land once consecrated can only be de-consecrated by Statute or a faculty. The consent of the Minister is required by sect. 6 of the Burial Act, 1900 (*s*), before unconsecrated ground maintained by a council under the Act of 1879 and set apart for the purposes of burial can be used for any other purpose. [1013]

Again, the Disused Burial Grounds Act, 1884 (*t*), as amended by sect. 4 of the Open Spaces Act, 1887 (*u*), prevents the erection of buildings upon any disused burial ground except for ecclesiastical purposes. [1014]

Chapels.—Sect. 11 of the Cemeteries Clauses Act, 1847 (*a*), as incorporated with the P.H. (Interments) Act, 1879, authorised the council to build such chapels for the performance of the burial service as they thought fit, but sect. 25 of the Act of 1847 (*b*) required the council to build within the consecrated part of the cemetery, and according to a plan approved by the bishop of the diocese, a chapel for the performance of the burial service according to the rites of the Established Church. This obligation of the council was repealed by sect. 2 (4) of the Burial Act, 1900 (*c*), and the powers of the council as to chapels are now regulated by sect. 2 of that Act. This allows the council at their own cost to erect on any part of their cemetery which is not consecrated or set apart for the exclusive use of any particular denomination, any chapel which they consider necessary for the due performance of funeral services, but any chapel so erected after July 10, 1900, is not to be consecrated or reserved for the exclusive use of any denomination. The council may at the request and cost of the residents within their borough or district belonging to any particular denomination, erect, furnish and maintain a chapel for funeral services according to the rites of that denomination on the ground appropriated to their use, and an appeal may be made to the H.O., if such a request is made and the estimated costs are tendered to the council or reasonably secured, and they either refuse to grant the request or fail to give effect to it within a reasonable time.

It therefore follows that a council who provide a cemetery under the Act of 1879 are not bound to build a chapel on the consecrated portion under sect. 25 of the Cemeteries Clauses Act, 1847, and that a chapel reserved for the exclusive use of a particular denomination can only be erected and maintained at the expense of members of that denomination. [1015]

It should be noted in this connection, that where a cemetery is laid out by a company under a local Act incorporating the Cemeteries Clauses Act, 1847, the provisions of that Act relating to chapels (*d*) still apply, and the company is under an obligation to build a chapel on the consecrated part of the cemetery for the performance of the burial service according to the rites of the Church of England.

After the erection of a chapel, no body may be buried within fifteen feet of the outer wall of the chapel, or in any vault under it (*e*).

(*q*) 12 Statutes 382.

(*s*) 2 Statutes 251.

(*u*) *Ibid.*, 280.

(*b*) *Ibid.*, 261.

(*d*) *Viz.* ss. 11 and 25 ; 2 Statutes 258, 261.

(*e*) Cemeteries Clauses Act, 1847, s. 39 ; 2 Statutes 263.

(*r*) Open Spaces Act, 1906, s. 10 ; 12 Statutes 387.

(*t*) *Ibid.*, 278.

(*a*) *Ibid.*, 258.

(*c*) *Ibid.*, 249.

As to the arrangements for the performance of a religious service in a cemetery, see title **BURIALS AND BURIAL GROUNDS** (the Burial Service), at p. 340, *ante*. [1016]

Loans for Cemeteries.—When application is made to the M. of H. by the council of a borough or district for his sanction to a loan for the acquisition of land for a cemetery, the following particulars and documents are required by the M. of H. :

- (1) A copy of the resolution of the council authorising the application.
- (2) Scale plan of the site ; key plan showing locality ; means of access and position of sources of domestic water supply.
- (3) Plans, sections and details of cost of all proposed works.
- (4) Report by the M.O.H. on the suitability of proposed site.
- (5) Area of land to be acquired, and whether any part is outside the borough or district.
- (6) Average annual number of burials in the borough or district for ten years.
- (7) Whether an Order in Council is in force prohibiting the opening of a new burial ground in the parish in which the site is situate without the consent of the Secretary of State or the Minister of Health.
- (8) Distance of site from nearest inhabited house, from the remotest part and from the most densely populated part of the borough or district.
- (9) Whether any, and if so how many, dwelling-houses are within 100 yards of the site and, if so, whether the required consents have been obtained (f).
- (10) Nature of soil, depth at which water is met with.
- (11) Whether an agreement (subject to the Minister's approval being obtained) has been entered into for the purchase of the site, and the price to be paid. [1017]

The following are the terms allowed by the M. of H. for the repayment of loans for cemetery purposes :

For land	-	-	-	-	60 years (maximum)
„ building and drainage	-	-	-	-	30 years „
„ laying out and planting	-	-	-	-	20 years „
„ fencing and gates	-	-	-	-	15—20 years „

[1018]

Control by the Ministry (g).—It should be noted that the M. of H. should be approached in connection with the establishment of a cemetery under the Act of 1879, where :

- (i.) A loan is proposed.
- (ii.) Compulsory powers of purchase are required (h).
- (iii.) The proposed cemetery is outside the district, and an objection has been made, or
- (iv.) There is an Order in Council in force prohibiting the opening of a new burial ground in the parish containing the cemetery without the previous approval of the Ministry. [1019]

Apparently the obligation cast upon a cemetery company by sect. 60 of the Cemeteries Clauses Act, 1847 (i), of forwarding an audited and

(f) See *ante*, p. 471, as to this restriction on use of land for a cemetery.

(g) As to Government control and supervision of a burial ground, see title **BURIALS AND BURIAL GROUNDS**.

(h) See *ante*, p. 472.

(i) 2 Statutes 268.

certified yearly return of income and expenditure to the clerk of the peace for the county in which the cemetery is situated, on or before the expiration of one month after the day on which the accounts end, applies also to a local authority maintaining a cemetery under the P.H. (Interments) Act, 1879. Apparently this return is supplementary to that required to be made to the Minister under Part XI. of the L.G.A., 1933 (*k*), where the accounts are not audited by a district auditor.

There are undoubtedly many advantages to be gained as regards the provision of a cemetery under the Act of 1879, compared with the involved procedure for the adoption and administration of the Burial Acts (*l*), and particularly where the burial ground is to serve one or more rural parishes. Thus under the Act of 1879 only the consent of the Ministry to a loan is needed, whereas that of the parish meeting of each parish, the county council and the Ministry is required to a loan raised by a parish council. [1020]

Maintenance of Cemetery.—A council by whom a cemetery is provided are authorised by sect. 11 of the Cemeteries Clauses Act, 1847 (*m*), to lay out and embellish the grounds. By sect. 16 they are required to keep the cemetery and the buildings and fences in complete repair and in good order and condition out of the cemetery receipts. Special powers are given to them for constructing and improving roads to the cemetery, and with regard to the drainage of the cemetery. It is an offence to cause or suffer water to be fouled by offensive matter from the cemetery. These provisions are contained in sects. 12 to 14 and 18 to 22 of the Cemeteries Clauses Act, 1847 (*n*), as incorporated with the P.H. (Interments) Act, 1879. A resumé of the Act of 1847 will be found below (*o*).

In carrying out their statutory powers the council must do as little damage as possible, and are liable to pay compensation for damage (*p*).

In the article BURIALS AND BURIAL GROUNDS, the general and practical administration of a cemetery is dealt with, and reference should be made to pp. 336—340, *ante*, of that title for information on points which are common to the two types of burial-places. The keeping of the statutory records, viz. (i.) grave plan; (ii.) register of graves; and (iii.) register of burials, are there discussed, together with practical suggestions as to forms, etc., necessary for cemetery management. As the management of a cemetery established under the Act of 1879 by a council is largely in the hands of the cemetery superintendent, reference should be made to the title CEMETERY SUPERINTENDENT (*q*).

[1021]

The important "Memorandum of the Local Government Board on the Sanitary Requirements of Cemeteries" (*r*) must be mentioned here. It is concerned with pointing out certain matters in the laying out of cemeteries likely to affect public health, and making suggestions for

(*k*) See ss. 244—247; 26 Statutes 437.

(*l*) As to which, see title BURIALS AND BURIAL GROUNDS.

(*m*) 2 Statutes 258.

(*n*) 2 Statutes 259, 260.

(*o*) *Post*, pp. 479—482.

(*p*) Cemeteries Clauses Act, 1847, s. 17; 2 Statutes 259. For such liability for damage, see *Crowhurst v. Amersham Burial Board* (1878), 4 Ex. D. 5; 2 Digest 65, 412 (liability for horse eating yew leaves).

(*q*) See that article for the appointment, duties and removal of this official.

(*r*) Printed in Brooke Little's Law of Burial, 3rd ed., pp. 719—726.

the prevention and alleviation of the same. The chief matters touched upon include :

- A. Contamination of air from putrefying bodies, and how obviated.
- B. Pollution of wells and streams used for drinking purposes.
- C. Certain requirements regarding :
 - (1) suitable soil and proper elevation of site ;
 - (2) suitable position, especially with respect to houses and sources of water supply ;
 - (3) sufficiency of space for interments.

Other suggestions are made with regard to the size of grave spaces (*s*) and requirements of population, and the Memorandum discusses also the effects of soil upon the decomposition of bodies. Finally, the obligation under sect. 41 of the Cemeteries Clauses Act, 1847, of distinguishing grave spaces by appropriate marks where the exclusive right of burial has been granted, is suggested as desirable in *all* cases (*t*).
[1022]

Bye-laws and Regulations.—Under sect. 141 of the P.H.A., 1875 (*u*), as applied by the P.H. (Interments) Act, 1879 (*u*), the council may make bye-laws with respect to the management of the cemetery and charges for the use of the same, and the bye-laws require the confirmation of the M. of H. under the opening words of sect. 184 of the Act of 1875, these not being repealed by the L.G.A., 1933, but the remainder of sect. 184 is superseded by sect. 250 of the Act of 1933 (*v*) (see title BYE-LAWS). Apparently, it was not intended by sect. 141 of the P.H.A., 1875, that the charges for grave spaces should be regulated by bye-laws approved by the Minister, and in general the bye-laws in force merely regulate the charges for interment in common graves, viz. those in which no exclusive right of burial is granted.

Apart from bye-laws, the council are required by sect. 38 of the Cemeteries Clauses Act, 1847 (*a*), to make regulations for ensuring that all burials within the cemetery are conducted in a decent and solemn manner. The kind of regulations commonly made are mentioned on pp. 339, 340, *ante*, and these do not require the approval of the Minister.
[1023]

A series of model bye-laws with regard to cemeteries was re-issued by the M. of H. in 1931 (*b*). Any local authority proposing to make bye-laws should apply to the Ministry for forms on which to forward drafts in duplicate of the bye-laws for preliminary approval. The series can be adapted for the use of a borough council, an U.D.C. or a R.D.C.

The matters dealt with in the model bye-laws are as follows :

1. The construction of a vault.
2. Prohibition against a body being buried in a grave less than three feet below the surface, unless the nature of the coffin and the soil renders a less depth suitable.
3. A direction that a layer of earth six inches in depth should separate coffins.
4. The avoidance of disturbal of human remains when a grave is re-opened for a further interment.

(*s*) Which differ, within small limits, in different cemeteries.

(*t*) See, as to register of graves, title BURIALS AND BURIAL AUTHORITIES.

(*u*) 13 Statutes 682, 796.

(*v*) 26 Statutes 440.

(*a*) 2 Statutes 263.

(*b*) Series XIV., Cemeteries (H.M. Stationery Office).

5. A prescription that a coffin deposited in a vault should be imbedded in and covered with concrete or placed in an airtight receptacle of slate or stone.
6. A prescription that the turfing or "planting" of exclusive graves, not covered with a gravestone or monument.
7. A prohibition of violent or indecent, etc., behaviour at burials.
8. A prescription that penalties for breaches of the above.
9. A prescription that charges for burials in graves for which no exclusive right of burial has been granted. [1024]

Fees.—Sect. 40 of the Cemeteries Clauses Act, 1847 (c), authorises the council to set apart such parts of the cemetery as they think fit for the purpose of granting exclusive rights of burial therein, and to sell either in perpetuity or for a limited time, the exclusive right of burial in any parts so set apart, or the right of one or more burials therein. The council may also sell the right of placing any monument or gravestone in the cemetery, or any tablet or monumental inscription on the walls of any chapel or other building within the cemetery. It is considered that the sums payable on these sales need not be approved by the M. of H., and that as already stated (*d*) the only charges which require the Minister's approval are those for interments in common graves. [1025]

A statement of the points to be considered when a scale of charges is being drawn up will be found in the title **BURIALS AND BURIAL GROUNDS** at pp. 340—342, and forms of deed granting a right of burial and for the transfer of such a right are printed at the end of this article. They are founded on the forms prescribed by the schedule to the Act of 1847 (*e*).

The following scale indicates the nature of the fees usually charged, but does not include the amount of the fees, as much variation is found in the amounts of the fees. In most instances a higher fee is charged where the person interred was not an inhabitant of the area for which the cemetery is provided, and it is not unusual to find that double fees are chargeable in such cases. In some cemeteries the cost of an exclusive right of burial in a vault or brick grave may exceed by £20 the sum charged in another cemetery. [1026]

SCALE OF FEES

Vault or Brick Grave :

Purchase of exclusive right to construct and bury in vault or brick grave 9 ft. by 4 ft.
Interment therein.

Earth Grave :

Purchase of exclusive right of burial in single private earth grave 6 ft. 6 in. by 2 ft. 6 in. including deed of conveyance.

(Usually these "private" graves are divided into classes according to their position, and various fees charged accordingly. Lower fees, again, are sometimes charged for children not exceeding 12 years old.)

Interments in Common Graves (f) :

Still-born child, or child not exceeding one month old.
Child over one month but not exceeding 12 years of age.
Adult and child exceeding 12 years of age.

(c) 2 Statutes 264.

(d) See *ante*, p. 476.

(e) 2 Statutes 270.

(f) Charges for interments in common graves should be approved by the M. of H., see *ante*, p. 476.

Sundry Fees.—Out-of-hours fee: fee for removing or replacing monument (*g*), or gravestone; turfing and planting a private grave; exhumation of a body (exclusive of re-interment fee); searching Register of Burials; registration of transfer fee (*h*), and fee for Certificate of Entry in Burial Register (*i*). [1027]

In addition to the scale of fees already indicated, a table of fees to be received by the council in respect of services rendered by ministers of religion or sextons must be drawn up under sect. 3 of the Burial Act, 1900 (*k*), and submitted to the H.O. for their approval. These fees will be collected by the council, with the other fees payable to them, and then paid over to the minister or sexton concerned. The council, not the relatives of the deceased person, are thus responsible for paying the minister. It is understood that where charges for grave spaces vary in different parts of a cemetery, the H.O. will allow a corresponding variation of the fees to ministers, although the fees must be of the same amount in the consecrated and unconsecrated parts of a cemetery; see sect. 3 (1) of the Act of 1900. [1028]

Chaplains and other Officers.—The power of the council under sect. 27 of a Cemeteries Clauses Act, 1847 (*l*), to appoint a clergyman of the Established Church to officiate as chaplain in the consecrated part of a cemetery provided under the Act of 1879 was repealed by sect. 7 of the Burial Act, 1900 (*m*), although chaplains then in office were not disturbed. This section imposed on the incumbent of an ecclesiastical parish, wholly or partly situate within the area for which a cemetery is provided, with respect to his own parishioners and persons dying in that parish, the same obligations to perform funeral services as in a burial ground provided under the Burial Acts. These obligations arise under sect. 32 of the Burial Act, 1852 (*n*), and sect. 5 of the Burial Act, 1857 (*o*), which provide that the incumbent shall perform the same duties as if the burial ground were the churchyard of the parish.

Power to appoint a clerk to assist in the performance of the burial service in the consecrated part of the cemetery, and also to appoint grave-diggers and other servants for the care and use of the cemetery, is conferred by sects. 34 and 37 of the Act of 1847 (*p*). The right of a parish clerk to receive fees in respect of interments in a cemetery and the right of a sexton to receive a fee, if no services are rendered by him, was abrogated by sect. 3 (5) of the Burial Act, 1900 (*q*). [1029]

Monumental Inscriptions.—The bishop of the diocese (and all persons acting under his authority) has the same power of objecting and procuring the removal of any inscription on a monument in the consecrated part of a cemetery as he possesses in connection with monuments in churches or chapels of the Church of England, or in any other consecrated ground (*r*). [1030]

Protection of the Cemetery.—Sects. 58 and 59 of the Act of 1847 (*s*), headed "And with respect to the Protection of the Cemetery," apply

(*g*) Varying according to the size.

(*h*) Refer to "Purchase and Transfer of Rights of Burial," in title BURIALS AND BURIAL GROUNDS.

(*i*) Interment fees, except where otherwise stated, should include the fee for the minister.

(*k*) 2 Statutes 249.

(*l*) *Ibid.*, 261.

(*m*) *Ibid.*, 251.

(*n*) *Ibid.*, 201.

(*o*) *Ibid.*, 228.

(*p*) *Ibid.*, 263.

(*q*) *Ibid.*, 250.

(*r*) S. 51 of the Cemeteries Clauses Act, 1847; 2 Statutes 266.

(*s*) 2 Statutes 268.

to cemeteries provided under the P.H. (Interments) Act, 1879, and are summarised on p. 482, *post*. [1081]

Rating.—The privilege conferred on burial boards by sect. 15 of the Burial Act, 1855 (*t*), of being assessed to local rates on the value of the land when it was acquired for a burial ground does not extend to cemeteries provided under the P.H. (Interments) Act, 1879, and these are rated on their full rateable value. See further as to the rating of cemeteries the title **RATING OF SPECIAL PROPERTIES**. [1082]

II. THE CEMETERIES CLAUSES ACT, 1847 (*u*), AS APPLYING TO CEMETERY COMPANIES

Introductory.—This Act contains a scheme for the laying out and management of any cemetery authorised by Parliament. The Act applies only when it has been incorporated with some other Act, in which case its clauses are to be read as one with the incorporating Act (*a*), and its terms contemplate that the cemetery will be provided by a cemetery company incorporated by another Act of Parliament. [1083]

Acquisition of Land.—The Act provides machinery for the acquisition (including compulsory acquisition) of land for a cemetery by a company (defined as meaning the “person” by the special Act authorised to construct the cemetery) with a prohibition against the construction of any part of the cemetery within 100 yards of any dwelling-house without the consent of the owner, lessee and occupier of the house (*b*). This prohibition, it should be noted, is directed against the construction of the cemetery and not against actual interment, as in the case of burial grounds under the Burial Acts. [1084]

Chapels.—Provision is made for the erection, etc., of a chapel or chapels, a matter already considered (*c*), but a company will still be required by sect. 25 of the Act (*d*) to build within the consecrated part of the cemetery, according to a plan approved by the Bishop, a chapel for the performance of the burial service according to the rites of the Established Church. [1085]

Enclosure of the Cemetery.—The cemetery provided must be enclosed by walls or fences of the materials and dimensions prescribed by the special Act, or, if none is so prescribed, by substantial walls or iron railings eight feet high at least; but this provision no longer applies to cemeteries established under the P.H. (Interments) Act, 1879 (*e*). The company must keep the cemetery and its buildings and fences in complete repair, and in good order and condition (*f*). [1086]

Roads, Drainage, etc.—The company have special powers with regard to the making, improvement, and widening of roads to the cemetery, and may enter into contracts for maintaining the same (*g*). They must take proper steps to ensure adequate drainage of the cemetery and to connect their drains with sewers, and penalties recoverable by action are imposed upon them for permitting streams, etc., to be fouled by offensive matter from the cemetery (*h*). Furthermore, they are liable

(*t*) 2 Statutes 223.

(*u*) *Ibid.*, 255.

(*a*) S. 1.

(*b*) S. 10, as amended by s. 2 of the Burial Act, 1906; 2 Statutes 258.

(*c*) See *ante*, p. 473.

(*d*) 2 Statutes 261.

(*e*) See s. 15 of the Act of 1847 and s. 10 of the Burial Act, 1900; 2 Statutes 259.

(*f*) S. 16; 2 Statutes 259.

(*g*) Ss. 12 to 14; 2 Statutes 259.

(*h*) Ss. 18, 20 to 22; 2 Statutes 260.

in damages in such a case to any person entitled to the use of the water. [1037]

Consecration.—If the Bishop of the Diocese in which the cemetery is situated is satisfied as to the title of the company to the land, he may, on application by the company, consecrate a portion of the cemetery, which will thenceforth be set apart for the burial of the dead in accordance with the rites of the Established Church, and must be used only for such burials (*i*). This provision is, however, modified by sect. 1 of the Burial Laws Amendment Act, 1880 (*k*), which allows the chaplain of a cemetery to permit an interment in consecrated ground without, or in unconsecrated ground with, the use of the Church of England service, provided the proper notice be given by the proper person concerned in the statutory form (*l*). The company may also set apart the whole or a portion of the cemetery which is not reserved for members of the Established Church for persons not being members of that Church (*m*). The division between the consecrated and unconsecrated portions of the cemetery must be defined by suitable marks (*n*). [1038]

Removal of Bodies.—Bodies buried in the consecrated portion of the cemetery may not be removed from their place of burial without the like authority as is required by law for the removal of any body buried in the parish churchyard (*o*), *i.e.* by a faculty issued by the Consistory Court of the Diocese. Except where a faculty has been granted for the removal of a body from one consecrated place of burial to another, it is unlawful, even though a faculty has been granted, to remove a body, or human remains, which have been interred in a burial place, without the licence of a Secretary of State, but by the common law a coroner may order a body to be disinterred within a reasonable time after death either for the purpose of an original, or further inquisition (*p*), but it is still undecided whether a Secretary of State's licence is necessary to legalise such an order (*q*). [1039]

Chaplain, Burial Service.—Provision is made by sect. 27 of the Act of 1847 for the appointment and licensing of a chaplain to officiate in the consecrated part of the cemetery. The appointment is subject to the approval of the bishop, who has power to revoke the licence and remove the chaplain for any cause that appears to him to be reasonable. As pointed out on p. 478, *ante*, in cemeteries provided under the P.H. (Interments) Act, 1879, the power to appoint a chaplain has been removed (*r*), but a cemetery company are still subject to this obligation, and the chaplain, when required, is to perform the burial service over interments in the consecrated part of the cemetery (*s*) subject again to the alteration of the law made by the Burial Laws Amendment Act, 1880, already referred to. [1040]

Clerk, Gravediggers, etc.—The company may, with the consent of the chaplain, appoint a clerk to assist him in performing the burial service in the consecrated part of the cemetery (*t*). They may also

(*i*) S. 23 ; 2 Statutes 261.

(*k*) *Ibid.*, 242.

(*l*) For this form, see *Encyclopædia of Forms and Precedents*, 2nd ed., Vol. II., 617.

(*m*) Cemeteries Clauses Act, 1847, s. 35 ; 2 Statutes 263. As to consecration generally, see title CONSECRATION.

(*n*) *Ibid.*, s. 24 ; 2 Statutes 261.

(*o*) *Ibid.*, s. 26 ; *ibid.*

(*p*) 3 Halsbury (Hallsham ed.), 614.

(*q*) *Ibid.*, p. 615, footnote (*a*).

(*r*) By s. 7 of the Burial Act, 1900 ; 2 Statutes 251.

(*s*) Cemeteries Clauses Act, 1847, s. 28 ; 2 Statutes 261. As to Registration of Burials, see title BURIALS AND BURIAL GROUNDS, under sub-heading "Register of Burials."

(*t*) *Ibid.*, s. 34 ; 2 Statutes 263.

appoint gravediggers and other servants necessary for the care and use of the cemetery (*u*).

The care and management of cemeteries is largely in the hands of the cemetery superintendent. For the appointment, duties, and removal of this official, see title CEMETERY SUPERINTENDENT. [1041]

Exclusive Rights of Burial, Monuments, Inscriptions.—A considerable part of the Act of 1847 is concerned with these matters. It cannot be too often stated that a grant of exclusive right of burial in a cemetery, though conferred by deed (being an incorporeal hereditament in the nature of an easement) does not confer any freehold interest in the plot of land in question, nor does the payment of a sum of money for the erection of a vault confer any property in the vault (*a*). Apparently, in the latter case, the only rights possessed by the grantee are those of opening the vault for the purpose of interments after due notice given, and of making, with the consent of the company, any necessary repairs (*b*). A form of grant of right of burial and of an assignment of a right of burial, is printed in the Schedule to the Act (*c*). These grants and assignments must be registered by the clerk of the company (a fee of 2*s.* 6*d.* or such other sum as may be prescribed being charged for registration), and the register may be perused at all reasonable times by the grantee or assignee of the right, on payment of 1*s.* or such other sum as may be prescribed (*d*). Usually a fee of 1*s.* is charged. Probates of wills in which the right of a grantee has been disposed of must also be registered and the registration fee may be charged (*e*). It has been pointed out (*f*) that the case of a person dying intestate has been overlooked, for some difficulty might arise here as to who was the "owner" of the right. A similar fee is also payable for an inspection of the register of assignments.

The consent of the owner of the exclusive right of burial for the time being is required before any body can be buried in a place where an exclusive right has been granted by the company; and the issue of such a grant does not confer any right to the burial within the consecrated part of the cemetery of the body of a person not entitled to such burial under the rites of the Church of England; nor does the grant of an exclusive right of burial include any right to place any monument, gravestone, tablet or monumental inscription within the consecrated portion of the cemetery (*g*). The company may take down and remove any gravestone, monument, tablet or inscription erected without their authority (*h*), but apparently not on the ground that, though permission to erect has been granted by them, they have not been paid the fee (*i*). [1042]

Payments to Incumbents and Parish Clerks.—These are provided for by sects. 52—57 of the Act of 1847, but need not be mentioned

(*u*) Cemeteries Clauses Act, 1847, s. 37; 2 Statutes 263.

(*a*) As to right of access to a vault in a cemetery, and refusal, see *Hoskins-Abraham v. Paignton U.D.C.*, [1929] 1 Ch. 375, C. A.; Digest (Supp.). In this case the rights enjoyed by a grantee are exhaustively discussed.

(*b*) With regard to cemeteries controlled by public authorities the subject of exclusive right of burial has been treated in title BURIALS AND BURIAL GROUNDS, under the sub-title "Purchase and Transfer of Rights of Burial."

(*c*) 2 Statutes 270.

(*d*) Cemeteries Clauses Act, 1847, s. 43; 2 Statutes 264.

(*e*) *Ibid.*, s. 47.

(*f*) 3 Halsbury (Hailsham ed.), 580, note (*n*).

(*g*) Cemeteries Clauses Act, 1847, s. 49; 2 Statutes 265.

(*h*) *Ibid.*, s. 50.

(*i*) *Sims v. London Necropolis Co.* (1885), 1 T. L. R. 584; 7 Digest 548, 268.

in detail here. Such sums only are payable as are prescribed "in the special Act," and no such payments are provided for by the P.H. (Interments) Act, 1879 (*k*). As to the fees of all classes, including those payable to ministers in the case of burial in a cemetery controlled by a local authority, see title **BURIALS AND BURIAL GROUNDS**, "Management of Burial Grounds," on pp. 340—342, *ante*. [1043]

Protection of the Cemetery.—Every person who wilfully destroys or injures any building, wall or fence, belonging to the cemetery, or destroys or injures any tree or plant therein, or who daubs or disfigures any wall thereof, or puts up any bill therein, or on any wall thereof, or who wilfully destroys, injures, or defaces any monument, tablet, inscription, or gravestone within the cemetery, or does any other wilful damage therein; and every person who plays at any game or sport, or discharges firearms, save at a military funeral, in the cemetery, or who wilfully and unlawfully disturbs any persons assembled in the cemetery for the purpose of burying any body therein, or who commits any nuisance in the cemetery, is liable to a penalty not exceeding £5, which is payable as a forfeiture to the company (*l*). This penalty is recoverable summarily before two justices (*m*), and the offender is liable to immediate arrest if his name and address are not known. There is also an obligation cast upon the company or council to publish on notice boards details of the offences punishable summarily under the statutes and bye-laws applying to a cemetery, and failure to do so precludes the recovery of penalties in respect of those offences (*n*).

As to cemetery regulations generally, see title **BURIALS AND BURIAL GROUNDS** ("Management of Burial Grounds"). [1044]

Rating.—A cemetery company owning a cemetery, and disposing of plots for grave sites in the land they control are deemed to be "occupiers" of the same and are liable to be rated as such (*o*). [1045]

Registration of Burials.—A company owning and maintaining a cemetery under a local Act incorporating the Cemeteries Clauses Act, 1847, must provide for the registration of burials in its burial ground (*p*). In practice, the system in use will be found to be similar to that in use in a burial ground controlled by a local authority (*q*). [1046]

Form of Grant of Right of Burial.

By virtue of the Cemeteries Clauses Act, 1847, as incorporated with the P.H. (Interments) Act, 1879, we [*name of council*], in consideration of the sum of to us paid by, of, do hereby grant unto the said the exclusive right of burial [or the right of burying bodies, *as the case may be*] [or the right of placing a monument, tablet or gravestone] in [*here describe the ground intended for the exclusive burial, or for placing a monument, tablet, or gravestone, as the case may be, so as to identify the same, and if a place of exclusive burial, add "numbered on the plan of the cemetery, made in pursuance of the said Act,"*] to hold the same to the said in perpetuity [*or the period agreed upon*] for the purpose of burial (*or as the case may be*).

Given under our Common Seal, this day of in the year

(*k*) 18 Statutes 796.

(*l*) Cemeteries Clauses Act, 1847, ss. 58, 59; 2 Statutes 268.

(*m*) *Ibid.*, s. 62; 2 Statutes 269. See note (*n*), *infra*.

(*n*) See Railways Clauses Consolidation Act, 1845, s. 143; 14 Statutes 80. ss. 140—160 of this Act are incorporated with the Act of 1847 by s. 62 of that Act.

(*o*) As to rating of cemeteries, see title **RATING OF SPECIAL PROPERTIES**.

(*p*) Registration of Burials Act, 1864; 2 Statutes 276.

(*q*) As to which, see title **BURIALS AND BURIAL GROUNDS** ("Management of Burial Grounds," on p. 338, *ante*).

Form of Assignment of Right of Burial.

I, A.B., of....., in consideration of the sum of paid to me by C.D., of....., do hereby assign unto the said C.D. the exclusive right of burial in (*here describe the cemetery and place of burial*), and numbered..... on the plan of the cemetery, which was granted in pursuance of the Cemeteries Clauses Act, 1847, as incorporated with the P.H. (Interments) Act, 1879, to me (*or unto A.B. of.....*) in perpetuity (*or as the case may be*) by (*here state the name of the council or company*), by a deed of grant bearing date the..... day of....., and all my estate, title, and interest therein, to hold the same unto the said C.D. in perpetuity (*or, as the case may be for the remainder of the period for which the same was granted by the said council or company*) subject to the conditions on which I held the same immediately before the execution hereof.

Witness my hand and seal, this..... day of.....

[1047]

LONDON

The P.H. (Interments) Act, 1879 (*r*), does not apply to London, and it is therefore unnecessary for the purposes of this work to discuss the position of cemetery companies in London. [1048]

(*r*) 13 Statutes 796.

CEMETERIES, RATING OF

See RATING OF SPECIAL PROPERTIES.

CEMETERY SUPERINTENDENT

	PAGE		PAGE
APPOINTMENT - - -	483	RIGHTS AND DUTIES - - -	484
TENURE OF OFFICE - - -	484	LONDON - - -	485

See also titles : BURIALS AND BURIAL GROUNDS ;
CEMETERIES.

Appointment.—Where a cemetery is provided by a borough or district council under the P.H. (Interments) Act, 1879 (*a*), a superintendent would be appointed under sect. 189 or 190 of the P.H.A., 1875 (*b*), which gave a general power of appointing such officers and servants as might be necessary and proper for the efficient execution of that Act. But these sections are repealed by the L.G.A., 1933, and replaced by sects. 106 and 107 of that Act (*c*), under which any future appointment would be made. Where, however, the cemetery is a burial ground provided under the Burial Acts, 1852 to 1906, a superintendent would be appointed under sect. 15 of the Burial Act, 1852 (*d*).

A superintendent is usually selected by the burial committee,

(*a*) 13 Statutes 796.

(*c*) See 26 Statutes 361, 362.

(*b*) *Ibid.*, 707, 708.

(*d*) 2 Statutes 194.

where such a committee exists, of the burial authority. Should there be no committee *eo nomine*, and the health committee or some sub-committee deals with matters concerning burials, an officer would be selected by that body, or even by the whole council which, in any case, would confirm or make the appointment. [1049]

Tenure of Office.—Any superintendent appointed under the P.H.A., 1875, or under sect. 15 of the Burial Act, 1852, holds his office at the pleasure of the council, as also does any superintendent appointed under sect. 106 or 107 of the L.G.A., 1933 (see sub-sect. (2) of each of those sections) (e). But notwithstanding this fact, sect. 121 of the Act of 1933 (f) allows the council and the officer to agree, as part of the terms of the appointment, that the appointment shall be subject to such reasonable notice on either side as may be agreed. This enables the council and the officer to agree that the officer shall not resign or be dismissed without notice having been given, a specified number of months or weeks beforehand, subject, of course, to the right of the council to dismiss the officer, without notice, for misconduct. Sect. 121 of the Act goes on to provide that where on January 1, 1934, an officer holds office upon terms which purport to provide for notice before the appointment can be determined, that stipulation shall be deemed, as from that date, to be valid. This provision supersedes the case of *Brown v. Dagenham U.D.C.* (g), in which it was decided that such a stipulation was invalid, where under the statute, the officer held his office at the pleasure of the council.

As to the superannuation of a superintendent, see the title SUPER-ANNUATION. [1050]

Rights and Duties.—The cemetery superintendent is the official whose duties are concerned with the practical administration of the cemetery, under the direction of the council or their committee. He should be chosen, therefore, with due regard to his practical acquaintance with the work he has to undertake and his qualities as an administrator. He should be adequately paid because, subject to the direction of the clerk to the authority, he must take entire responsibility for the proper conduct of burials in the cemetery and its management; hence it is convenient for him to reside at the cemetery lodge, should there be one.

The superintendent's duties fall under four main heads, viz. :

1. Superintendence of grave-digging and incidental matters.
2. General upkeep of the cemetery—gardening, planting of graves and care of paths, etc.
3. Carrying out of the cemetery regulations.
4. Control of the cemetery staff. [1051]

Authorities should, on the appointment of their cemetery superintendent, give some care to a proper and sensible division of work between this official and their clerk, for much trouble and possible friction will be saved in this way. The superintendent is the practical man on the spot; the clerk to the burial authority has at his disposal an adequate clerical staff, and this consideration suggests that it would be wise to entrust the keeping of the statutory records, etc., to the clerk's staff. Unfortunate results (though, of course, there have been many exceptions) have followed the practice of placing such matters in the

(e) 26 Statutes 361, 362.

(f) *Ibid.*, 370.

(g) [1929] 1 K. B. 737; Digest (Supp.).

superintendent's hands, hence a custom prevails with many authorities of sending down a clerk to the cemetery for a few hours daily, who enters up the statutory records (registers of burials and graves (*h*)) which are kept at the cemetery office, and satisfies himself that the copy of the grave plan is kept up-to-date and tallies with the one at the office of the authority. Furthermore, it is of the greatest importance that the grave plan should be prepared by a qualified surveyor, though in its preparation the superintendent's suggestions should prove useful, especially in deciding on the various classes of graves.

The cemetery superintendent will frequently be consulted in regard to grave spaces about to be purchased or already sold. Visitors may come to the cemetery seeking a grave with scanty knowledge of its situation. The superintendent's services should be at their disposal, and the registers, duplicates of those at the authority's offices, consulted. In order to assist in a rapid identification of a grave, it is the custom in some cemeteries to hand the undertaker a form, giving the number of the grave and its situation, to be handed over to the relatives of the deceased person. While it is the practice of burial authorities to encourage the conduct of negotiations with regard to graves at the office of their clerk, the cemetery superintendent is frequently called upon for his advice in connection with the purchase of a grave space by people who wish to see the actual site in the cemetery. [1052]

In the superintendent's office may be kept the register of burials which must be entered up by the minister who performs the funeral service (*i*), while certain standing orders, which it is the duty of this official to carry out, are usually included in the Cemetery Regulations, *e.g.* all persons admitted to the cemetery are subject to his orders and control; he must use his discretion with regard to the admission of children. It is his business to see that bicycles and perambulators do not inconvenience visitors, that no flowers, trees or shrubs are removed from the cemetery without his permission; that adequate arrangements are made for the "parking," etc., of vehicles entering the cemetery; and the prompt carrying out of all burials according to instructions from the clerk's office (*k*). In practice, too, he is the recipient of certain fees, for example the late fee in the case of a funeral arriving after the time fixed for the last service of the day, but finishing before closing time, but in general, all financial arrangements between the burial authority and its clients should be carried out (by a borough council or district council at any rate) in the accountant's department of the council. [1053]

London.—The foregoing observations apply equally to London. [1054]

(*h*) See title BURIALS AND BURIAL GROUNDS.

(*i*) See the Parochial Registers Act, 1812, s. 2 and Sched. D; 15 Statutes 692, 698. The register is usually kept in the cemetery chapel.

(*k*) See title BURIALS AND BURIAL GROUNDS.

CENSORSHIP OF FILMS

See CINEMATOGRAPHS.

CENSUS

	PAGE		PAGE
PRELIMINARY NOTE - -	- 486	REFERENCES TO THE CENSUS IN	
USE OF CENSUS STATISTICS - -	- 486	FUTURE ENACTMENTS - -	489
CONTENTS OF CENSUS - -	- 487	SPECIAL LOCAL CENSUS - -	489
SPECIAL STATISTICS - -	- 488	LONDON - - - - -	489
INTERIM STATISTICS - -	- 488		

Preliminary Note.—In the eighteenth century proposals for a census of England and Wales were opposed, not only because of the awful results which followed the numbering of the people by King David, as recorded in the Second Book of Kings, but because it was feared that a census would be a prelude to the adoption by the Government of compulsory military service or of some new form of taxation. The first Census Act for the taking of a national census of the numbers in each parish of houses, families, and persons and of the employments of the people, was passed in 1800. A census was taken in every subsequent tenth year, but as the returns were based on estimates made by the incumbent or by parish officers the machinery was imperfect, and it was not until the census of 1841 that the duty of filling up the forms of returns was imposed on occupiers of houses. By the Census Act, 1880, the duty of superintending the census was imposed on the Local Government Board instead of the Home Secretary, but the administrative control of the enumeration was left in the hands of the Registrar-General. The power conferred by sect. 1 of the Census Act, 1920 (*a*), to direct by Order in Council that a quinquennial census shall be taken has not yet been exercised, but it is understood that the census of 1931 may be followed by another in 1936. The object of this title is to shew what the census figures comprise and how they may be utilised by local authorities. [1055]

Use of Census Statistics.—Much valuable assistance in local administration may be gathered from the census reports and other information supplied by the Registrar-General, and it will be seen from p. 488 of this Article that this information comprises classified statistics of the occupations, housing, and public health of the community. It is unnecessary to dwell upon the advantages of reliable statistics of populations and areas, especially in connection with the rearrangement of the parliamentary constituencies or the alteration of local government areas. Special statistics (see *post*) derivable from the census returns are available, and it will be seen under this heading that figures in advance of the publication of the census reports may be obtained. General Exchequer grants to local authorities are apportionable, until the

(*a*) 3 Statutes 555. Before the Act of 1920, each census taken was authorised by a separate Act of Parliament, but s. 1 of the Act of 1920 allows the taking of a census to be directed from time to time by Order in Council.

period ending March 31, 1947, partly, and afterwards wholly, according to "weighted population" (b). [1056]

Subjects affected by changes in the census figures occur under the following titles of this work :

Advertisements.—Bye-law authority (c).

Borough Police.—Force in new boroughs (d).

Commons.—Meaning of "suburban common" (e).

County Borough.—Promotion of Bill for creation of (f).

Housing.—Definition of "agricultural parish" for purposes of grants (g).

Intoxicating Liquors.

Areas in which specified annual value of premises is required for licences (h).

For fixing minimum duty for licences (i).

Juries and Jury Lists.—Qualification of special jurors (k).

Parish Councils.—Population of parish for new separate council (l).

Shops.—Local authority for an urban district (m).

Stock.—An issue by municipal borough exceeding 50,000, is a trustee security (n). [1057]

Contents of Census.—The matters in respect of which particulars for the purpose of the census may be required by the returns are (1) names, sex, age; (2) occupation, profession, trade or employment; (3) nationality, birthplace, race, language; (4) place of abode and character of dwelling; (5) condition as to marriage, relation to head of family, issue born in marriage; (6) any other matters with respect to which it is desirable to obtain statistical information with a view to ascertaining the social or civil condition of the population (o).

In 1931, it was required under the second head that the precise branch of occupation should be stated, whether out of work or retired; and in trade or manufacture, the particular kind of work done, of material worked in and the article, if any, made or dealt in; under the third head in Wales (including Monmouth) in respect of persons aged 3 years or over, whether able to speak Welsh only or able to speak both Welsh and English (p); and under the sixth head, the number of living rooms dwelt in by the persons in respect of whom particulars are included in any separate return.

(b) L.G.A., 1929, ss. 88—91, 94, 134, Sched. IV., Parts III., IV.; 10 Statutes 939—941, 942, 973, 983, 984.

(c) Advertisements Regulation Act, 1907, s. 7; 13 Statutes 909.

(d) L.G.A., 1933, ss. 136, 296; 26 Statutes 373, 463, title "Local Government."

(e) Commons Act, 1876, s. 8; 2 Statutes 553.

(f) L.G.A., 1933, ss. 139, 296; 26 Statutes 379, 463, title "Local Government."

(g) Housing Act, 1930, s. 60; 23 Statutes 434.

(h) Beerhouse Act, 1840, s. 1; 9 Statutes 918; Refreshment Houses Act, 1860, s. 8; *ibid.*, 925, 926; Licensing Act, 1872, s. 46; *ibid.*, 941; Licensing (Consolidation) Act, 1910, ss. 37, 109, Sched. V.; *ibid.*, 1011, 1042, 1051.

(i) Finance (1909—10) Act, 1910, s. 45, Sched. I., Scale 3; 9 Statutes 969, 970, 979.

(k) Juries Act, 1870, s. 6; 10 Statutes 73.

(l) L.G.A., 1933, ss. 43 (2), 296; 26 Statutes 326, title "Local Government."

(m) Shops Act, 1912, s. 13 (2); 8 Statutes 621.

(n) Trustee Act, 1925, s. 1 (1) (m); 20 Statutes 97.

(o) Census Act, 1920, Sched.; 3 Statutes 553.

(p) Census Order (S.R. & O., 1931, No. 73).

Each county volume contains, for the county and its component urban and rural divisions as well as its associated county boroughs (if any) according to the areas existing on the census day, particulars of population and acreage, ages and marital condition, housing (including number of families in a house, persons per room, etc.), and language (Wales and Monmouth). The particulars are given in respect of administrative counties, county boroughs, metropolitan and municipal boroughs and any wards, urban districts and any wards, and rural districts, also in respect of civil parishes. Ecclesiastical parishes and districts will be dealt with in a separate volume. A supplement to each volume will show the acreages and populations of areas created or altered in boundary as a result of a county review under sect. 46 of the L.G.A., 1929, together with abridged statistics of housing, age and marital conditions. The populations thus shown in the supplements are the populations according to the census of the year in which the census was taken and are receivable in evidence accordingly (q).

A general index to all areas mentioned in the census reports (other than wards) giving location and population, where ascertainable, will be published. It will include some 18,000 names of villages, hamlets and localities which have no defined boundaries.

Separate volumes will deal with industries (detailed list of 400) and occupations (detailed list of 600). The latter volume will contain a classification by occupation alone, but will show the total employees in each area. Juveniles (14—20) will be classified by occupation and cross-classified by age (4 groups). [1058]

Special Statistics.—The Registrar-General may, if he so thinks fit, at the request and cost of any local authority or person, cause abstracts to be prepared containing any such statistical information, being information which is not contained in his reports and which in his opinion it is reasonable for that authority or person to require, as can be derived from the census returns (r). This provision, it is understood, will enable the Registrar-General to satisfy any demand for statistics urgently needed in advance of publication, as well as any particular statistics of a greater degree of elaboration (either in respect of subject-matter or of area) than those to be included in the Reports. Any request for such special information should be addressed to the Registrar-General, Census Office, Bromyard Avenue, Acton, London, W.3, who will be pleased to advise and furnish an estimate of cost. It is desirable that early application should be made since the special work entailed, if planned in advance in connection with the general tabulation scheme of a census, can often be carried out more cheaply than if undertaken later as a separate and independent operation. [1059]

Interim Statistics.—It is the duty of the Registrar-General from time to time to collect and publish any available statistical information with respect to the number and condition of the population in the interval between one census and another, and otherwise to further the supply and provide for the better co-ordination of such information, and the Registrar-General may make arrangements with any Government department or local authority for the purpose of acquiring any necessary materials or information (s).

(q) *Re Druitt, Druitt v. Dehler*, [1903] 1 Ch. 446; 43 Digest 934, 3714.

(r) Census Act, 1920, s. 4 (2); 3 Statutes 557.

(s) *Ibid.*, s. 5; *ibid.*, 557.

The Registrar-General publishes weekly and quarterly returns of births and deaths registered in county boroughs and other great towns and of cases of certain specified infectious diseases notified in boroughs, urban and rural districts and port sanitary districts. For each year he publishes a statistical review with tables of civil and medical statistics.

For the use of medical officers of health for all counties, metropolitan boroughs, county boroughs, and county districts, the Registrar-General furnishes the following local statistics in respect of their individual areas, together with certain national statistics for England and Wales as a whole. The local statistics furnished comprise (1) estimated resident population as at the middle of the year; (2) numbers of births and deaths registered in the calendar year, modified by inward and outward residence transfers, classified according to sex, legitimacy, and cause of deaths; (3) numbers of cases of the notifiable diseases of small-pox, scarlet fever, diphtheria, enteric fever, puerperal pyrexia and erysipelas. The national statistics furnished comprise (1) a summary of the vital statistics for England and Wales, London, and the respective aggregates of the great and smaller towns, and (2) a statement of the case rates of the above notifiable diseases. [1060]

References to the Census in Future Enactments.—For the purposes of the L.G.A., 1933, and of any enactment passed after May 31, 1934, relating to local government, references to the last published census are, as regards any local government area, to be construed as references to the last census in respect of which the Registrar-General has published a report giving the population of that area, not being a report which is, or purports to be, of a provisional nature (*t*). It will be seen that the Preliminary Report of the Registrar-General, which is the first report issued after a census has been taken, is not to be used as settling the population of an area. While the figures in the final report rarely differ materially from those in the Preliminary Report, it would be highly inconvenient if a material difference did occur, after action had been taken on the figures first published. [1061]

Special Local Census.—Provision is made in sect. 6 of the Census Act, 1920 (*u*), allowing a county council, borough council (*a*), or U.D.C. to apply to the Minister of Health that an Order in Council may be issued authorising a special census to be taken for the whole or any part of their area, with or without an adjoining area. The expenses of any such census will be borne by the council by whom the application was made (see sect. 7 of the Act). It is believed that no such census has hitherto been authorised. [1062]

London.—The provisions referred to in this Article apply to London. An inter-decennial census was taken on March 28, 1896, under the London (Equalisation of Rates) Act, 1894, sect. 3 (*b*). [1063]

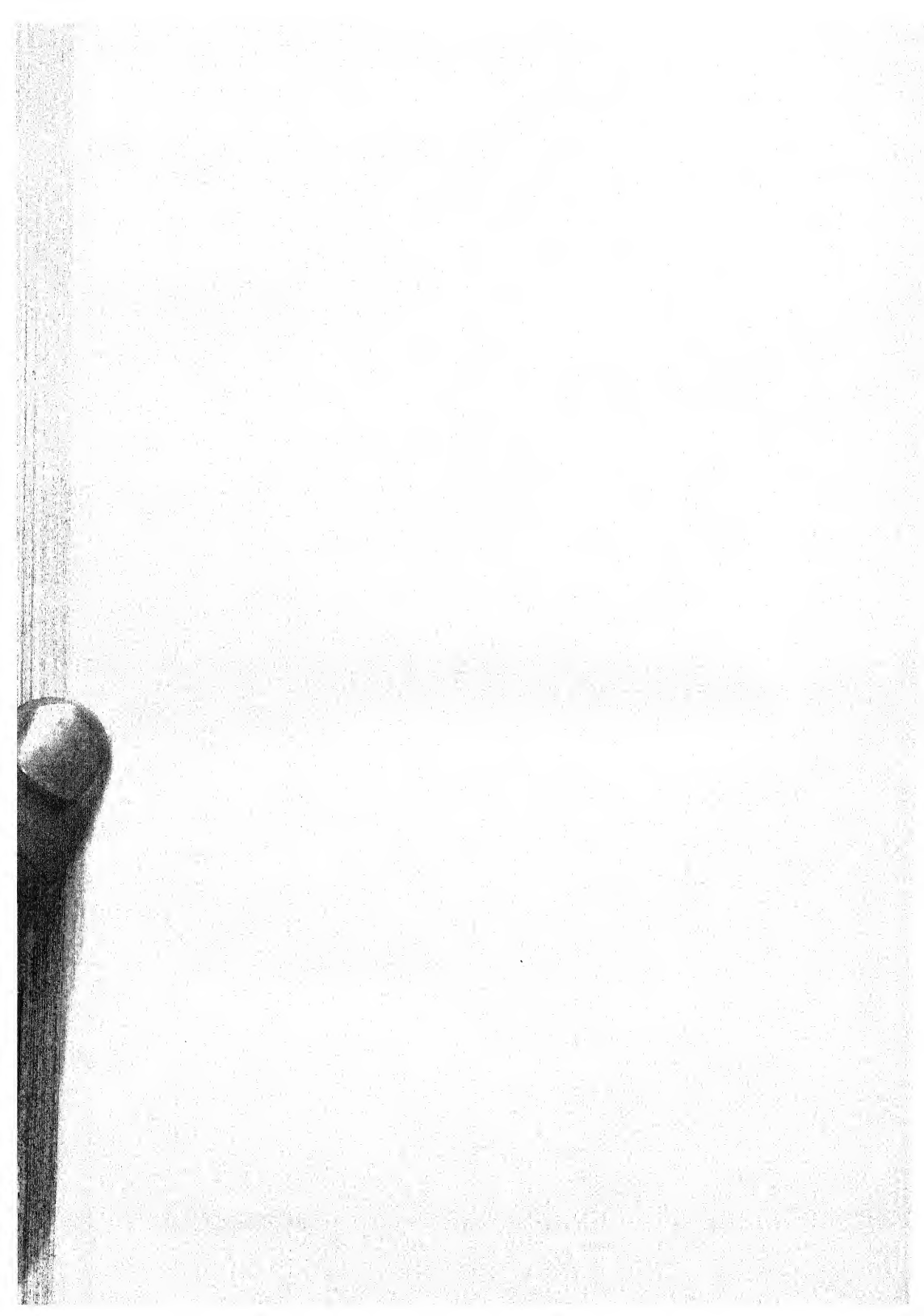
(*t*) L.G.A., 1933, ss. 296 (2), 308 (1); 26 Statutes 462, 470, title "Local Government."
(*u*) 3 Statutes 557.

(*a*) This provision also extends to a metropolitan borough council and the Common Council of the City of London.

(*b*) 57 & 58 Vict. c. 53.

CENSUS ACT, 1920

See LOCAL CENSUS



INDEX

BANKERS AND OTHER OVERDRAFTS, 1—4

- bank accounts, pooling of, 4
- identity of separate funds in, 4
- capital expenditure, financing, 2
- cases affecting, 2, 3
- cash balance, necessity for, 1
- London, Local Authorities (Financial Provisions) Act, 1921, s. 3, provisions of, 4
- revenue scheme not included in estimates, as to, 2
- stock, raising money by issue of, 3
- authority for, 3
- temporary loans, 1, 2
- duty of local authority to make rate, 1, 2
- Local Authorities (Financial Provisions) Act, 1921, provisions of, 1
- Local Government Act, 1933, s. 215, provisions of, 2
- Rating and Valuation Act, 1925, s. 12, effect of, 1, 2

BARBED WIRE, 4—5

- Barbed Wire Act, 1893...4, 5
- local authorities entitled to take action under, 5
- London, in, 5
- observations on, 4, 5
- procedure under, 5
- damage caused by, remedy at common law, 5
- meaning of, 5
- “nuisance to a highway,” meaning of, 5
- notice to abate, 5

BATH CHAIRS, 6—8

- bye-laws affecting, 6
- drivers of, 6
- property left in, 6
- proprietors of, 6
- rates and fares, 6
- stand for, 6
- “hackney carriage,” a, 6
- “invalid carriages,” 6, 7
- brakes for, 7
- excise duty on, 8
- lighting, regulation for, 7
- may not draw trailer, 7
- measurements, 7
- provisions of Road Traffic Act, 1930, as to, 6, 7
- speed of, 7
- who may drive, 7
- licence to, 7
- licensing, 6
- London, in, 8
- mechanically propelled, 6, 7
- excise duty, 8

BATHING, 8—11

- bye-laws for the regulation of, 9
- breaches of, legal proceedings and penalties for, 11
- model, 11
- powers of local authorities to make, 9, 10
- approval of Minister of Health, 10
- rights of private owners to be observed, 11

INDEX

BATHING—*continued.*

- London. *See* title ADOPTIVE ACTS.
- powers of local authorities to provide bathing sheds, 9
life-saving appliances, 9
- seashore, on the, rights of, 8
- lessee of, 8
- Waterworks Clauses Act, 1847, s. 61, provisions of, 11

BATHING HUTS. *See* title BATHING.

BATHS AND WASHHOUSES, 12—29

- accounts and audit, 26
- baths, nature of accommodation and use of, 19
 - classes of, 19
 - closing, 19
 - entertainments, using for, 19, 20
 - medicinal, 19
 - towels, costumes, etc., 19
 - vapour, 19
- Baths and Washhouses Acts, 1846-1923...12—14
 - acquisition of existing baths and washhouses under, 17
 - authority of trustees to sell or lease, 18
 - land for the purposes of, 15
 - by agreement, 16, 17
 - compulsory purchase, as to, 16, 17
 - provision of baths, etc., on, 18
 - redemption of charges on, 17
 - selling or exchanging, 17
 - adoption of by local authorities, 14
 - approval of Minister of Health, 14
 - appropriation of land for the purposes of, 16
 - authorities for the execution of, 14, 15
 - appointment of joint committee by, 15
 - officers under, 21, 22
- borrowing powers, 26, 27
 - legislation affecting, 27
- bye-laws, 22—24
 - appeal by person aggrieved by, 23
 - approval of Minister of Health, 22
 - evidence of, 23
 - model, 23
 - penalties under, 23
 - power of local authority to make, repeal, etc., 22
 - publication of, 23
 - under seal, 23
- charges, 25
 - entertainment duty, 26
 - recovery of, 25
 - scale of, publication of, 25
 - resolution fixing, 25
- commissioners of, 15
 - contracts by, 18
- contracts for the purposes of, 18
- Crown lands, sale or lease of for provision of public baths, 17
- income and expenditure, 26
- legislation affecting, 12, 13
 - "local authority," use of term, 13
- Local Government Act, 1933, s. 266, contracts by local authorities under, 18
 - requirements of, 18
- London, administration of Acts in the county of, 28
 - City of, no established baths or washhouses in, 28
 - swimming instruction in, 28
- Minister of Health, powers of, 13, 14
 - submission of draft bye-laws to, 22
- officers, 21, 22
 - appointment and removal of, 21
 - bath attendant a domestic servant, 22
 - having the custody or control of money, 21, 22
 - position under parish council, 22

INDEX

BATHS AND WASHHOUSES—*continued.*

- officers—*continued.*
 - salaries of, 21
 - when bath used for other purposes, 21
- proceedings against offenders, 24, 25
- recovery and application of penalties, 24, 25
- refusal of admission, 25
- removal of offender, 25
- sale of, 26
- washhouses, facilities of, 20
 - classes of, 20
- water and gas, supply of, 20, 21
 - water, from wells, springs or streams, 21
 - owners of waterworks, duties of, 20, 21
 - powers of local authorities as to, 20, 21
 - by council, borough, 21
 - parish, 21
 - urban district, 21
- under Towns Improvement Clauses Act, 1847, s. 121...21

BEACHES. *See* title ESPLANADES, PROMENADES AND BEACHES.

BEATING THE BOUNDS, 29—31

- custom of, 29
- perambulations, 29—31
 - abatement of nuisance during, 29
 - effect of, evidence of, 30, 31
 - cases on, 30, 31
 - London, in, 31
 - expenses of, 29
 - payment of, 30
 - lawful, 29
 - method of, 29, 30
 - over private property, 29

BEGGING, 32—34

- as affecting local administration, 32
- beggars resorting to common lodging-houses, 32
 - report by keepers of, 32
- care and protection of children found begging, 33, 34
 - local authorities for, 34
- children procured or encouraged to beg, 34
 - Vagrancy Act, 1824, provisions of, 34
- juvenile court, 33
- London, legislation affecting, 34
- use of persons under 16 for begging, 32, 33
 - Children and Young Persons Act, 1933, provisions of, 32, 33
 - meaning of "public place," 33
 - "street," 33

BETTERMENT, 35—53

- claims, assessment of, 52, 53
 - arbitrator, appointment of, 52
 - matters for the consideration of, 52, 53
- for, 50
 - change of use of property, 51
 - deferment of, notice for, 50
 - disposition of the property, where, 51
 - or change of use of property, 51, 52
 - notice of, 51
- notice of, 50
- property of statutory undertaker, in case of, 51
- protection against duplication of, 53
- renewal of, 50, 51
- when must be made, 50
- withdrawal of, 50
 - fresh claim by authority, 50, 51

INDEX

BETTERMENT—*continued.*

- clauses, introduction into bills of, 39, 40
- former provisions as to, 37, 38
- injurious affection, in case of, 41
- meaning of, 35
- “melioration,” 37
- moneys, application of, 53
 - payment by instalments of, 53
- principle of, application of, 41
 - definition of, 34, 35
 - by Select Committee of 1894...39, 40
- provisions for the purposes of, 37, 42, 43
 - betterment or improvement charge, 37
 - recoupment, 37
 - set-off, 37
- recoupment, 37, 41, 42
 - under Development and Road Improvement Funds Act, 1909...44
 - Housing Act, 1930...48
 - Public Health Act, 1925...47, 48
 - Unemployment (Relief Works) Act, 1920...45, 46
- report of Ministry of Reconstruction, 40, 41
 - main recommendations of, 40, 41
 - injurious affection, as to, 41
 - recoupment, as to, 41, 42
 - Select Committee of 1894...38—40
- set-off, 37
 - under Development and Road Improvement Funds Act, 1909...43
 - Housing Act, 1930...48
 - Light Railways Act, 1896...43
 - Public Health Act, 1925...47
 - Roads Improvement Act, 1925...46
 - Unemployment (Relief Works) Act, 1920...45
 - under Public Works Facilities Act, 1930...48, 49
 - compulsory purchase order, as to, 49
 - Town and Country Planning Act, 1932...49, 50

BETTING, 53—55

- nuisance, where, 53
- preliminary note, 53
- streets and public places, in, 54
 - arrest without warrant, powers of, 54
 - bye-laws, as to, 54, 55
 - distribution of bookmakers' handbills, 54
 - frequenting, 54
 - London, bye-laws affecting, 55
 - Metropolitan Streets Act, 1867, s. 23, provisions of, 55
 - penalties for, 54
 - person apparently under sixteen, 54
 - “street,” meaning of, 54

BICYCLES, 55—57

- arrest of rider, 56
- “carriage” within Highway Acts, 55
- Highway Code, provisions of, 56
- introductory note, 55
- led or ridden upon footpath, 55
- lighting, 56, 57
 - bicycle being wheeled, when, 57
 - “hours of darkness,” 57
- reflectors, 57
- “summer time,” 57
- “sunset,” 57
- London, in, no special statutory provisions relating to, 57
- riding furiously, 56
 - negligently, 56
 - on wrong side of road, 56
- signalling approach of, 56

INDEX

BILL POSTING, 57—59

- hoardings, etc., conditional licence for the purpose of, 58
 - “ fly ” posting, 58
 - payments for, application of, 58
 - penalties for breach of condition, 58
 - licence to erect, 58
 - street, safety of, 58, 59
- London, statutes affecting—
 - London Council (General Powers) Act, 1890, s. 14...59
 - Metropolis Management Amendment Act, 1862, s. 90...59
 - Metropolitan Police Act, 1839, s. 54 (10)...59
- malicious damage to bills, etc., 58
- nuisance caused by, 58
 - bye-laws dealing with, 58
- scope of article, 57

BILLIARDS, 59—60

- licence for, 59
 - application for, notice of, 60
 - breach of conditions of, penalties for, 60
 - form of, 60
 - fully licensed public-house does not need, 59
 - grant, renewal and transfer of, 59
 - keeping public billiard table without, 60
 - offences against the “ tenor ” of, 60
 - allowing play on Sundays, Christmas Day, etc., 60
 - penalties for, 60
 - permitting drunkenness, etc., 60
 - refusal to admit a constable, 60
- licensed premises, right of constable to enter, 60
- London, law applicable to, 60

BILLS, BORROWING BY, 61—65

- introductory note, 61
- London, “ London County Bills,” 65, 66
- money bills, 61—65
 - “ bearer,” 61
 - interest on, 62, 63
 - issue, costs of, 62
 - mode of, 62
 - model clause authorising the, 64, 65
 - nature and purpose of, 61, 62
 - not dealt with on Stock Exchange, 62
 - observations on the use of, 63
 - principle underlying, 63
 - records of, 62
 - renewal or repayment of, 63
 - transactions in, return of particulars to Minister of Health, 62
- power to “ discount promissory notes,” 61

BILLS, PARLIAMENTARY AND PRIVATE, 66—88

- bill, private or public, whether, 67
- counsel, interested parties may appear by, 67
- “ hybrid bills,” 67
- introductory observations, 66—68
- local authorities, expenses of, 87
 - opposition to private bill by, 67, 68
 - special powers of, 71
- London, powers of county council, 87, 88
 - Metropolitan Borough Councils, 88
 - Water Board, 88
- private bills, classes of, 72
 - distinguished from public, 67
 - notice and contents of, 69
 - opposition by local authority to, 67, 68
 - to, parties appearing by counsel, 67
 - promotion of, 67, 68
 - local authority by, 68

INDEX

BILLS, PARLIAMENTARY AND PRIVATE—*continued.*

- private bills, requirements of Local Government Act, 1933, as to promotion of, [68—71
 - adoption by local authorities holding special powers, 71
 - approval of promotion, 68
 - failure to comply with, 71
 - meeting of local government electors, 69, 70
 - final decision of, 70
 - notice of, 69
 - procedure, 68, 69
 - resolutions of local government electors, 68, 69
 - approval by, 69
 - explanation of, 69
 - poll, demand of, 70
 - duties of council on adverse vote, 71
 - equality of votes on, 71
 - how taken, 70
 - penalties for offences in connection with, 70
 - publication of, 68, 69
 - requirements of Local Government Act, 1933, as to opposition to, [83
 - meeting of local government electors, 83
 - advertisement of, 83
 - resolution to oppose at, 83
- Standing Orders as to opposition, 84
 - petition against bill, 84
 - against alterations, 84
 - deposit of, 84
 - form of, 84
 - late petitions, 84
 - petitioners, *locus standi* of, 84—87
 - discretion of the House as to, 84—85
 - rules and practice of House of Commons, 85—87
 - Lords, 85
 - specific *locus standi* in certain cases, 85
- Standing Orders as to promotion of, 71—83
 - deposit of bills with Parliament, 76
 - Government departments and other [authorities, 76—78
 - estimates, 77
 - plans, etc., 72—76
 - notices, newspapers and gazette, 80, 81
 - contents of newspaper notice, 81—82
 - abstraction of water, in case of, 82
 - burial, gas works, etc., referring to, 82
 - specific details in certain cases, 81—83
 - tramway bills, as to, 82
 - gazette notice, contents of, 82
 - notices to owners, 78, 79
 - abandonment of authorised works, 79
 - abstraction of water, 79
 - alteration or repeal of protective provisions, 80
 - provisions relating to nuisance, 80
 - compulsory taking or uses of land, 78
 - gas, electricity, sewage works, burial grounds, etc., 79
 - tramway bills, frontagers, 78
 - crossing railway, 78
 - notices to owners in case of certain bills, 78—80
 - mode of making applications, 80
 - service of, 80
 - preliminary steps, and latest dates for taking, 72—83
 - working-class houses, deposit of statement as to, 83
- public general Acts, nature of, 66
- "Standing Orders," 67, 68
 - local authority must comply with, 68
- statutory body promoting or opposing, 67

INDEX

BIRTH CONTROL, 89—95

- aspects of, 90, 91
 - economic, 90
 - legal, 91
 - medical and eugenic, 90
 - social, 90
- definition, 89
- Government policy in regard to, 92—93
 - clinics, ante-natal, 92, 93
 - gynæcological, 93
 - special birth control, 93
- maternity and child welfare centres, 92, 93
- history, 91
- Lambeth Conference of Bishops, resolution of, 92
- local authorities, action by, 94
- London, policy of metropolitan borough councils, 94, 95
- methods taught at clinics, 94
- objections to, 89, 90
 - Church of England views, 90
 - Roman Catholic Church, by, 90
- public opinion as to, growth of, 91, 92
- voluntary societies, clinics established by, 94

BIRTHS, NOTIFICATION OF. *See* title NOTIFICATION OF BIRTHS.

BIRTHS, REGISTRAR OF. *See* title REGISTRAR OF BIRTHS, DEATHS AND [MARRIAGES.

BLIND ALLEY. *See* title DEDICATION AND ADOPTION OF HIGHWAYS.

BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN, 96—108

- blind and deaf, education of, 96, 97
 - approved school, commitment to, 97
 - blindness, definition of, 96, 97
 - compulsory, age of, 105, 106
 - enforcement of, 106
 - period of, 97
 - contributions of parents towards, 106, 107
 - "expenses," meaning of, 106
 - recovery of, 106
 - deafness, definition of, 97
 - duty of local education authority, 97, 98
 - acquisition of or contribution to schools by, 97
 - terms of contribution, 98
 - boarding out children, 98
 - extent of, 98
 - parents, as to, 97
 - enforcement of, 97
 - licence to live with superintendent of educational institute, 97
 - parents neglecting to provide, proceedings against, 97
 - provision of guides for, 97
 - religious instruction, 107
- defective and epileptic, education of, 98—102
 - certified school for, discontinuance of, 102
 - commitment of child to school, 99
 - consent of parent, where necessary, 99
 - refusal of court to order, costs of parent, 99
 - compulsory, age of, 105, 106
 - enforcement of, 106
 - contributions of parents towards, 106, 107
 - "expenses" meaning of, 106
 - recovery of, 106
 - "defective," what included in term, 99, 100
 - duty of local education authority as to, 100—102
 - acquisition of and contributions to schools by, 102
 - boarding and lodging children, 101
 - child resident in another area, as to, 100
 - to ascertain what children are, 99, 100
 - provide facilities for examination of child, 100
 - special schools or classes, 101

BLIND, DEAF, DEFECTIVE AND EPILEPTIC CHILDREN—*continued.*

defective and epileptic, education of—*continued.*

duty of parent as to, 98

enforcement of, 98, 99

medical examination of children, 99

officer's certificate, 100

as evidence, 100

periodical examination of children, 102

religious instruction, 107

report of head teacher, 100

withdrawal of child from school, conditions of, 98

Local Government Act, 1929, effect of, 107, 108

London, provision by county council for education and care of, 108

mentally defective, children—

certifying officers, 103

examination by, 103, 104

report of, 104

classes of, 102, 103

doubtful cases, decision of Board of Education as to, 102

notification of, by heads of schools, 103

local education authority, 102, 103

of desirability for supervision, etc., in certain cases,

[103, 104]

school attendance officers, 103

placing under supervision, etc., 104, 105

reports on, 105

BLIND PERSONS, 108—120

Blind Persons Act, 1920, objects of, 109, 110

blindness, definitions of, 112, 113

Education Act, 1921, s. 69, under, 113

prevention of, 119

Public Health Act, 1925, s. 66 (1), provisions of, 110

care of blind children under five years of age, 113, 114

duty of county and borough councils as to, 109, 110

local education authorities, 110

prior to Blind Persons Act, 1920...108, 109

certification and registration of, 112

charities for, "charity for the blind," meaning of, 110, 111

registration of, 110, 111

exemption from, 111

registration authorities, 111

War Charities Act, 1916, application of, 110, 111

effect of, 111

employment of, 114, 115

augmentation allowance, 115

home workers, care, assistance and supervision of, 114, 115

schemes, 115

workshops, 114

economic provisions, as to, 114

home teaching service, 116

licences, dog, 118

wireless, 118

Local Government Act, 1929, grants under, 116, 117

contribution schemes, 117, 118

supervision by local authorities, 118

London, in, county council scheme as to, 119, 120

register of blind persons resident within county of, 120

"ordinarily resident," what constitutes, 113

pensions for, Blind Persons Act, 1920, s. 1, provisions of, 110

eligible age, 109, 110

evidence of blindness, 110

means, 110

in addition to contributory pension, 110

pension committee, appeal against decision of, 110

officer, inquiries by, 110

residential qualification, 110

INDEX

BLIND PERSONS—*continued*.

- schemes to promote the welfare of, 111
 - educational, 112
 - provision of workshops, homes, etc., 111, 112
 - special committees, 112
- special postal rates for, 118
 - travelling facilities for, 118
 - voting facilities for, 119
- unemployable, 115, 116
 - domiciliary assistance for, 115, 116
 - administering committees, 116
 - financial, 116
 - duty of local authorities towards, 115
 - Local Government Act, 1929, s. 5, provisions of, 115

BLOCK GRANTS. *See* title GENERAL EXCHEQUER GRANTS.

BOARD OF CONTROL, 121—129

- Acts, etc., affecting, 121
- advisory board, representative of London County Council on, 126
- approval of nursing homes, etc., by, 126
- commissioners under, 122, 123
 - reports by, 123
- constitution of, 122
- estimates of, 122
- functions of, under Lunacy and Mental Treatment Acts, 123—12
 - approval of premises and admission of patients to certain [forms of care, 126, 127
 - care of patients, 125, 126
 - application of mechanical restraint, as to, 125
 - correspondence with patients, 124
 - death of patient, notification of, 125
 - documents, examination of, 123, 124
 - amendment of, 124
 - illegal charge of person of unsound mind, as to, 126
 - inquiries by, 125
 - power of discharge, 125
 - exercise of, in certain cases, 125
 - reports to, 124
 - as to patients detained in private families and charitable [institutions, 126
 - visitation of, 126
 - visitation by, 124
 - production of patient, documents, etc., on, 124
- under Mental Deficiency Act, 127—129
 - approval of premises, 129
 - care of patients, 129
 - examination of documents, 128
 - on admission, 128
 - continuation, 128
 - power of discharge, 128
 - state institutions, 129
 - visitation, 128
- history of, 121, 122
- judge in lunacy, powers reserved to, 123
- London, City of, expenses incurred by common council under Mental Treat- [ment Act, as to, 126
- licensed houses in metropolitan area, 129
- Lunacy Commission, 121, 122
- patients received into single care, 127
- registration of hospitals by, 126, 127
- secretary and staff, 122
- supervision by, main issues of, 123

BOARD OF EDUCATION, 130—140

- annual report of, 134
 - information to be included in, 134
- arbitration, as, 140

BOARD OF EDUCATION—*continued.*

- consultative committee, constitution of, 131
 - reports of, 131, 132
- determination of questions and disputes by, 134—136
 - between local educational authorities and managers of non-provided schools, [135]
- general principles as to, 134, 135
 - instances of, 135, 136
 - may not administer oath, 134
 - must act judicially, 134
 - mandamus* or *certiorari* on failure to, 134
- documents of, as evidence, 131
- duties and powers of, 131
- educational endowments, 138
 - Charitable Trusts Acts, application of, 138
 - Charity Commissioners, exercise of certain powers of, by, 138
 - legislation affecting, 138
- functions the Board do not perform, 137, 138
- government schools, as to, 137
- general policy of, 138—140
- grant-aided schools, 137
 - curriculum of, 137
 - pay, etc., of, teachers in, 137
 - text-books for use in, 137
- grants by, 131, 140
 - condition of, 140
 - reducing or withholding, powers of, 131
 - regulations for the payment of, 131
- inmates of prisons, instruction of, 132
- inspection by, 134
 - duty of inspector, 134
- litigation by or against, 131
- local education authorities, 137—139
 - general policy in regard to, 138, 139
 - Education Act, 1921, s. 148 (1), provisions of, 140
- members of, 130
- non-statutory bodies, 132, 133
 - Adult Education Committee, objects of, 132
 - Burnham Committees, 133
 - constitution and object of, 133
 - juvenile organisations committee, 132, 133
 - chief aim of, 133
 - constitution of, 133
 - origin of, 132
 - secondary school examinations council, 133
 - chief function of, 133
 - constitution of, 133
 - meetings of, Board's officers may attend, 133
 - reports by, 133
 - scrutiny of examination papers, 133
- president of, 130
 - nominations for, 132
- private schools, 137
- proceedings of, 131
- public inquiries by, 136, 137
 - circumstances demanding, 136, 137
 - approval of bye-laws, 137
 - compulsory acquisition of land, 137
 - endowment of non-provided schools, 136
 - enforcement of the duties of a local education authority, 136
 - grouping of non-provided schools of the same denomination, 136
 - whether a new school is necessary, 136
- school, necessity for, considerations on determining, 134, 135
 - buildings, not provided by, 138
 - teachers, salaries of, reports of Burnham Committees, 133, 134
 - " suggestions for the consideration of," 139
 - not civil servants, 139
- statutory regulations, issue of, 139

INDEX

BOARD OF TRADE, 141—144

- constitution of, 141
- establishment of, 141
- foreshore, authority and control over, 143
 - consent to acts of local authority, necessity for, 143
 - reconstruction of bridges and works on, as to, 143
- "foreshore," definition of, 143
- gas examiner, appointment by, 142
 - local authority, 142
- referees, appointment of, 142
 - appeal against requirements of, 142
- general functions of, 143, 144
 - Boiler Explosions Acts, inquiries under, 143
 - customs and excise, 143
 - merchant shipping and seamen, 143
 - patents and designs, 143
 - pleasure boats, 144
 - trade statistics, 143
- meaning of term, 141
- must control the hall-marking of gold and silver goods, 143
 - keep apparatus for testing petroleum, 143
 - the flash point of oils, 143
- powers of, gas undertakings, as to, 142
 - Gas Undertakings Act, 1920, orders under, 142
 - referees, appointment of, 142
- post-war alterations of, 141, 142.
- president of, 141
- weights and measures, 142, 143
 - coal, approval of bye-laws for the sale of, 142
 - custody and examination of standards of, 142
 - power to make general regulations as to, 142
 - short weight, Sale of Food (Weights and Measures) Act, 1926, s. 9 (1), provisions of, 143
- stamps, obliteration of, 142
- verification and stamping of, 142

BOATS AND BOATMEN. *See* title PLEASURE BOATS.

BOATS, CANAL. *See* title CANAL BOATS.

BONDS, 145—153

- corporation, 145—152
 - availability of money raised by, 146
 - certificate, 146
 - form of, 150
 - death or bankruptcy of holder, 147
 - denominations of, 145
 - interest on, 147
 - payment of, 147, 148
 - introductory note, 145
 - issue of, margin covering, 146
 - mode of, 146
 - price of, 146
 - joint holders of, 147
 - model clause, 148
 - Coventry Corporation Act, Sched. VI., provisions of, 149—152
 - period of, 145, 146
 - register of holders, 147
 - repayment, 148
 - bond issued at a discount, 148
 - funds out of which, 148
 - premium on, freedom from income tax, 146
 - renewal of bond, 148
 - security for, 145
 - stamp duty, 147
 - transfer, on, 147
 - status of, 145
 - transfer and transmission of, 147

INDEX

BONDS—*continued*.

- London, City of, bonds issued by, 152
- County Council, issue of housing bonds by, 153
 - stock certificates by, 152
- powers of local authorities to issue, 152
- Public Authorities and Bodies (Loans) Act, 1916, provisions of, 152

BONDS, HOUSING. *See* title HOUSING BONDS.

BOOKS, ACCOUNTS, AWARDS, ETC., CUSTODY AND INSPECTION OF.
[*See* title RECORDS AND DOCUMENTS.]

BORIC ACID IN FOOD. *See* title PRESERVATIVES.

BOROUGH. *See* titles CHARTERS OF INCORPORATION; COUNTY BOROUGH;
[MUNICIPAL CORPORATIONS.]

BOROUGH ACCOUNTANT. *See* title FINANCIAL OFFICER.

BOROUGH ACCOUNTS, 154—163

Accounts (Boroughs and Metropolitan Boroughs) Regulations, 1930...157

- accounts subject to audit, 159
 - final ledger account, 159, 160
- application of, 157
- balance sheet, 158
- expenditure and costs accounts, 159
 - subsidiary services, 159
- final accounts, 158
- general loans, 160
- impersonal accounts, 157
 - income and expenditure, 157
- loan and capital accounts, 159
 - records to be kept under, 159
- personal accounts, 157
 - primary records and accounts, 158
- (Payment into Bank) Order, 1922...156
- county and non-county boroughs, differentiation between, 155
- date of closing, 160
- education, 155
- financial returns, 161, 162
 - contents of, 162
 - Local Government Act, 1933, s. 199, provisions of, 162, 163
 - sinking or redemption funds, 162
- Financial Statements Order, 1921...156
- former practice, as to, 154
- general rate fund, 154
 - payments out of, authority for, 154
 - exceptions to general rule, 155
 - receipts to be carried, 154
 - transactions to be entered under, 155
- housing, 155
- Housing Accounts Order, 1920...156
- Local Authorities (Audit) Order, 1928...157
- Local Government Act, 1933, ss. 185, 187 (1), provisions of, 154
 - s. 235, provisions of, 156
- London, 163. *See* Local Government Act, 1933, Parts X. and XI.
 - metropolitan, 156
 - police, 155
 - probation of offenders, 155
 - Public Assistance, 155
 - publication of, 160, 161
 - abstract of, 160
 - epitome of, 161, 162
 - public baths and libraries, 155
 - Rate Accounts Order, 1926...157
 - rating accounts, 154
 - regulations of Minister of Health as to, 156
 - remuneration of officials, 155
 - sewage farms and markets, 155

INDEX

BOROUGH ACCOUNTS—*continued.*

- trading undertakings, 154
- electricity, 155
- gas, 155
- transport, 155
- water, 155
- trust and charity funds, 155

BOROUGH ALDERMAN. *See* title ALDERMAN.

BOROUGH AUDITORS. *See* title AUDITORS.

BOROUGH BRIDGES. *See* title BRIDGES.

BOROUGH COUNCILLOR, 164—175

- borough council, constitution of, 164
- disability for voting, interest in contracts, 170—172
 - disclosure of, 170, 171
 - Local Government Act, 1933, s. 76, provisions of, 171, 172
 - married persons, 171
 - sub-committee, members of, 172
- election of, 165
 - electoral body, 164
- London, 175. *See* title METROPOLITAN BOROUGH.
- number of, 164
- office of, 164
 - acceptance of, 172
 - declaration of, 172, 173
 - motion from, 174, 175
 - disqualifications for, 165—168
 - aliens, 165
 - bankruptcy, 165
 - cessor of, 165
 - conviction for offence, 166
 - corrupt or illegal practices, 166
 - infancy, 165
 - office of profit, 166
 - official persons, 167
 - auditor, 167
 - coroner, 167
 - recorder, 167
 - school teachers, 167
 - poor relief, 167, 168
 - Blind Persons Act, 1920, exceptions under, 167
 - existing member of council, as to, 168
 - regular forces, 168
 - surcharge, 168
 - exemption from, 172
 - qualifications for, 165
 - proceedings in respect of, 168—170
 - member acting when disqualified, 168, 169
 - Chelmsford Committee, report of, 169, 170
 - petition, 168
 - re-election to, 165
 - term and tenure of, 173
 - vacation of, 173, 174
 - absence, 173, 174
 - member on active service, of, 173, 174
 - declaration of, 174
 - resignation by, 173
 - abolition of penalty on, 173

BOROUGH ENGINEER AND SURVEYOR, 175—183

- accepting fee or reward other than his proper remuneration, 180
- accounts of, 178
- appointment of, 177, 178
 - Local Government Act, 1933, provisions of, 177, 178
 - notice terminating, 177
- borough engineer, title of, 177

BOROUGH ENGINEER AND SURVEYOR—*continued.*

- consulting surveyor, 180
 - necessity for, 180
 - remuneration of, 180
- deputy surveyor, appointment of, 177
- duties of, 175, 179
 - building, as to, 179
 - constructive, 175
 - gas, water, and electricity, 179
 - highways, 179
 - private streets, 179
 - refuse, sewers, etc., 179
 - sanitary, 175
- interest in contracts, 179, 180
 - Local Government Act, 1933, provisions of, 180
 - notice of, 180
 - penalty on failure to give, 180
- London, metropolitan borough council to, 180—181
 - appointment and removal of, 180, 181
 - duties referred to, 181—183
- London Metropolitan Management Acts, provisions of, 180, 181
- member of council, disqualification for office of, 178
- Minister of Transport, control of, 173
- qualifications of, 178
 - administrative, 178
 - "fit person," 178
 - scientific training, 178
- security by, 178
- superannuation rights of, 178
- surveyor of highways, office of, 176
 - Highway Act, 1835, provisions of, 176
 - transfer of functions of, to local authorities, 176, 177
 - vacancy of, 178

BOROUGH FUNDS ACTS. *See* title BILLS, PARLIAMENTARY AND PRIVATE.

BOROUGH JUSTICES. *See* title JUSTICES OF THE PEACE.

BOROUGH MEDICAL OFFICER OF HEALTH. *See* title MEDICAL OFFICER OF [HEALTH.

BOROUGH POLICE, 184—198

- Acts affecting, 184, 185
- administration of, instructions as to, 188
- application of term, 185
- borough constable, 190—194
 - appointment of, 195
 - additional, 195
 - duties of, 193—194
 - "connected with the police," 193
 - extra, 193, 194
 - allowances for, 193, 194
 - Explosives and Petroleum Acts, enforcement of, 191
 - firemen, 194
 - money, collection of, 194
 - traffic control, 194, 195
 - jurisdiction of, 190, 191
 - outside area of borough, 191
 - mutual aid agreement, 191
 - powers of, 192, 193
 - admitting to bail, 192
 - arrest without warrant, 192
 - of person disturbing public peace, 192
 - suspected felon, 192
 - protection of in execution of his duty, 192, 193
 - retirement, etc., from force, 197, 198
 - compulsory, 198
 - notice of intending, 197
 - penalty on failure to give, 197

INDEX

- BOROUGH POLICE**—*continued*.
 borough constable—*continued*.
 retirement, etc., from force—*continued*.
 pension on, 197, 198
 “approved service,” 198
 return of clothing, etc., on, 198
 status of, 191, 192
 a servant of the Crown, 191, 192
 personal liability of, 191
 “constable,” office of, 189
 control of, 187, 188
 chief constable, 187
 in accordance with Police Acts and regulations, 188
 county police, consolidation with, 185
 forces, list of, 186, 187
 number of, 185
 disciplinary measures, 196, 197
 authority for, 196
 chief constable, punishment by, 196
 appeal against, 196
 dismissal, 196, 197
 reduction, 196, 197
 suspension, 196
 inspection of, 188
 London. *See* title METROPOLITAN POLICE.
 organisation of, 189, 190
 beats, 189
 “ordinary police work,” 189
 police district, 189
 prescribed ranks, 189
 number and designation of, 189
 Secretary of State, approval of, 189
 sections, grouping of, 189
 special departments, as to, 189, 190
 coroners’ inquiries, 190
 C.I.D., 190
 headquarters staff, 190
 lost property, 190
 training of recruits, 190
 warrant officers, 190
 women police, 190
 station, reserve and other duties, 189
 pay and conditions of service, 195, 196
 conditions, model, 196
 pay, in accordance with Police Regulations, 195
 police force, types of, 184
 Acts affecting, 184
 purposes, grant for, 188
 withholding, 188
 strength of, supplementing, 190
 traffic control, 194, 195
 Road Traffic Act, 1930, s. 49, provisions of, 194, 195
 Town Police Clauses Act, 1847, s. 21, provisions of, 194, 195
 watch committee, control by, 188

BOROUGH SURVEYOR. *See* title BOROUGH ENGINEER AND SURVEYOR.

BOROUGH TREASURER. *See* title TREASURER.

BOROUGH ROYAL. *See* title ROYAL BOROUGH.

- BORROWING, 199—226**
 advantages and disadvantages of, 200—202
 capital assets, 219, 220
 records of, 220
 estimates, 218—219
 expenditure, purpose of, 219, 220
 records of, 220

INDEX

BORROWING—*continued.*

capital fund, 221—223

precedent for establishment of, Liverpool Corporation (General
[Powers) Act, 1930, provisions of, 221—223
purposes, utilisation of redemption and sinking funds for the purposes
[of, 216—218

difficulties attaching to, 216

income tax, 216

interest, 216

investment, costs of, 216

funded and unfunded debt, 219

what included in, 219

general observations on, 199, 200

loan consolidation, 220

mortgages, pooling of, 221

local authority, by, 200, 201

considerations to be regarded, 201

forms of, 205, 206

loans, earmarking to borrowing powers, 206, 207

Accounts Order, 1930...206, 207

irredeemable, 207

repayment of, 207—216

date of, 210

local authority contrasted with commercial concern, 208

methods of, 210—216

annuity, 212

instalments by, 211

advantages of, 211

example of, 211

redemption funds, 215. *See* REDEMPTION FUNDS, *infra.*

sinking funds, 212—215. *See* SINKING FUNDS, *infra.*

periods for, equation of, 210

authority for, 210

maximum, 208, 209

special Acts, as to, 209

Local Government Act, 1933, provisions of, 209

report of select committee as, 208, 209

provisions for, returns to Minister of Health, 205

form of, 205

order of Minister on, 205

penalty on failure to make, 205

statutory declaration as to, 205

"repayment" variations in meaning of, 208

suspension of, 209

security for, 206

common form of, 206

revenues of the authority, charge on, 206

priority of, 206

methods of, 200

powers of, 202, 203

earmarking loans to, 206, 207

general purposes bill, contained in, 203

Local Government Act, 1933, s. 195, provisions of, 202

promotion of local Act for, 202

clauses in, 203

sanction to loan by certain local authorities for smaller authorities, 203

county council, by, 203

appeal against refusal

[of, 203

Government, 203

appropriate department for, 203

loans not requiring, 204, 205

City of London, privilege of, 205

procedure on application for, 203, 204

refusal of, 204

sanctions to loans, 203, 204

form of, 204

INDEX

BORROWING—*continued*.

local authority, by—*continued*.

trustee securities, 207

Trustee Act, 1925, Part I., provisions of, 207

securities issued by local authorities, as to, 207

London, empowering Acts, as to, 223

City of, powers of, 224

Metropolitan Board of Works (Loans) Act, 1869, provisions of, 223

powers of county council, 223, 225

metropolitan borough councils, authority for, 224

powers of, 225, 226

Minister of Health with consent
[of, 226]

Metropolitan Water Board, issue of stock by, 225

regulations as to, 225

mortgage, by way of, 225

redemption funds, 215, 216

accumulating, 213

contributions to, 215, 216

meaning of term, 215

non-accumulating, 215

redemption of stock by, 215

separate account to be kept of, 216

Stock Regulations and Consent Order, subject to, 215, 217

sinking funds, 212—215

accumulating, 213

accumulation of, 213, 214

investment of, 214

rate of, 213, 214

adjustments of, 214, 215

contributions of local authority, 215

application of, 213

surplus, 213

Local Government Act, 1933, s. 213, provisions of, 213

methods of repayment by, 213

nature of, 212

non-accumulating, 213

payments to, 215

reduction of, 213

sums paid in, investment of, 213

BOUNDARIES, ALTERATION OF. *See* titles ALTERATION OF AREAS; COUNTY
[BOROUGH, CREATION OF; COUNTY REVIEW]

BOUNDS, BEATING THE. *See* title BEATING THE BOUNDS.

BOWLING GREENS. *See* title GAMES, PROVISION FOR.

BREAD, 227—230

bakers, safeguards for, 228, 229

average weight of loaves, 228

bonâ fide mistake, 228

causes beyond control, 228

evaporation, 228

fancy, 228

french loaf, 228

what is, 228

London, law affecting, 230

London Bread Act, 1822, provisions of, 230

sale of, by weight, 227, 228

cut in slices and wrapped, where, 227

exceptions to, 227

loaves to weigh an integral number of pounds, 227

exceptions to, 227

net weight, meaning of, 227

overweight, as to, 227

retail, 227

Sale of Food (Weights and Measures) Act, 1926, special requirements of, 227

wholesale transactions, 228

warranty, defence of, 228

BREAD—*continued.*

- Sale of Food (Weights and Measures) Act, 1926, prosecutions under, 229
- formalities to be observed, 229
- of assistant by employer, 229
- scales and weights in shops, 229
- obligation to weigh, 229
- statutes relating to, 230

BREAKING UP OF ROADS, 230—240

- "area of user," 231
- common law rule as to, 230
 - exceptions to, 230
- general observations on, 230, 231
- local authorities, statutory rights of, 232—235
 - electricity, 234
 - frequent breakings-up, avoidance of, 234, 235
 - emergency works, as to, 235
 - gas, 233
 - Gas Regulation Act, 1920, order under, 233
 - sewers, 232
 - telegraphic services, 234
 - licensees of Postmaster-General, as to, 234
 - tramways and light railways, 233, 234
 - authority to construct, 233, 234
 - Light Railways Acts, provisions of, 233, 234
 - water, 232, 233
 - compensation for damage, 232
 - laying pipes for the delivery of, 232, 233
 - main, route of, 232
 - Public Health Act, 1875, provisions of, 232
- London. *See* title LONDON STREETS.
- passage, right of, 231
 - obstruction of, 231
- power of, local authorities cannot grant, 235
- private companies without parliamentary powers, 235
- persons, by, 238
 - Waterworks Clauses Act, 1847, provisions of, 238
- reinstatement of, 239
 - all convenient speed, with, 239
 - keeping in repair, periods of, 239
- statutory undertakers and promoters, by, 235—238
 - electricity, for the purposes of, 237, 238
 - by authorised undertaker other than local authority, 238
 - repairing authority, 237, 238
 - consent to, 237
 - notice of, 237, 238
- gas and water, 235
 - land not dedicated to the public, in case of, 233
 - service pipes, 236
 - cost of works, 236
 - work, notice of commencement and plans of, 236
 - superintendence of, 236
- tramways and light railways, 236, 237
 - alteration of gas or water mains, 236
 - telegraphic apparatus, 236
 - breaking up of footways, 236
 - rights of local authorities and others, reservation of, 237
 - sewers and drainage, interference with, 237
 - superintendence of works, 236
- subsoil, ownership of, 231
 - decisions as to, 231
 - metropolitan borough, as to, 231
 - Public Health Act, 1907, s. 47, application of, 231
- street improvements, alteration of water or gas pipes on, 240
 - expenses of, 240
 - notice to owner of, 240
 - public utility company sustaining damage by reason of, 240
- works, lighting and guarding of, 238, 239

BRIBERY. *See* title CORRUPTION IN OFFICE.

BRIDGE TOLLS. *See* title TOLLS AND STALLAGES.

BRIDGES, 241—259

adoption of, 242, 243

local authorities by, 243

agreements between highway authorities as to, 248

alteration of electric cables, etc., expenses of, on widening, repairing, etc., 252

amenities, protection of, 257, 258

advertisements from, 258

ancient bridge, 258

Bridges Act, 1929, application of, 252

authorities under, 253

agreements with bridge owners by, 253

bridge partly in one area and partly in another, 253

City of London, 253

order of Minister under, 253

application for, 253

canal, stoppage of traffic on, 254, 255

consent of owners, where necessary, 254, 255

date of operation, postponement of, 254

execution of works specified in, for, 253

mains, pipes, cables or wires of public utility under-
[takings, considerations as to, 254

maintenance of bridge, as to, 253

preliminary matters, rules as to, 254

purposes of, 252

reconstruction or improvement of bridge for, expenses
[of, 254

arbitration as to, 254

grants for, 255

statutory provision for protection of public utility
[undertaking, as to, 255

swing bridge, in case of, 253

toll bridge, where, 253, 254

transfer of property, rights, etc., by, 253

Road Fund, grants from, 255

canal, 251

common and statute law as to, development of, 241—244

county, 244—246

definition of, 244, 245

what is, 244, 245

culvert, 244

floating bridge, 244

Highway Act, 1835, s. 67, as to, 244

foot, 257

repair of, 257

highway, distinguished from, 241

London County Council, bye-laws for the regulation of certain, 260

maintenance by, 259

laying mains over, statutory provisions for, 260

maintenance and repair of roads over, 260

metropolitan borough councils, powers of, 260

malicious damage to, 258

Minister of Transport, advance of money to highway authorities by, 248, 249

classification of roads by, 249

orders as to strength and maintenance of, 248

traffic using, 248

powers of, 248, 249

new, Board of Trade requirements as to, 250

Road Fund grants for building, 250

submission of schemes for, to Minister of Transport, 250

nuisances on, 258, 259

non-repair, remedies for, 259

reinstatement of, by Postmaster-General, 252

repair of, approaches to, 246, 247

for safety of persons using highway passing underneath, 258

BRIDGES—*continued.*

- repair of, common law doctrine, 242
 - statutory obligations of local authorities as to, 242—244
 - non-repair, indictment for, 247
 - remedies for, 259
 - summary proceedings by highway authority, 247
 - person liable for, agreement with urban authority as to, 248
 - ratione tenuræ*, 247, 248
 - statutory owners by, 250, 251
 - trustees of the turnpike by, 247
- responsibility of local authorities as to—
 - county borough councils, 245, 246
 - councils, 245, 246
 - non-county boroughs and urban districts, 245, 246
 - prior to Local Government Act, 1929...245
 - statutory owners of, repair and maintenance by, 250, 251
 - light railways, 252
 - public utility undertaking, compensation for damage to, 252
 - railway companies, 251
 - highway, line crossing, as to, 251
 - reconstruction where "maintenance" necessitates, 251
 - tramway companies by, 251
- strength, standard of maintenance, etc. of, apportionment of expenditure on, 248
 - order of Minister of Transport affecting, 248
- toll, 255
 - compulsory acquisition of, 256
 - exemptions from, 256
 - procedure for, 256
 - exemption from, 255
 - freedom from, agreements for, 255, 256
 - "toll," definition of, 255
 - transfer of, 256
 - grant from Road Fund for purpose of, 256
- traffic over, appeal against restriction of, 248
 - order of Minister of Transport, as to, 248
- user of, prohibition and restriction of, 249, 250
 - inspection of bridge on, 250
 - costs of, 250
 - notice to Minister of Transport as to, 249
 - notices of, 249
 - contravention of, penalty on, 249
 - "proper position" of, 249
 - persons aggrieved by, appeal of, 250
 - removal, alteration or modification of, 250
 - weight of vehicle, 249
 - "axle weight," meaning of, 249
- Road and Rail Act, 1933, s. 30, provisions of, 249
- widening and improving, conveyance of land by commissioners of works for the
 - [purposes of, 245]

BRIDGES OVER STREETS, 260—262

- alteration or removal of, 260
 - request for, 261
- former law as to, 260
- interference with telegraph line by, Telegraph Act, 1878, s. 7, application of, 261
- licence for, 260, 261
 - conditions of, 260
 - contravention of conditions of, penalty for, 261
 - expenses of grant, 260
 - refusal of, appeal against, 261
- London, City of, consent of corporation, necessity for, 262
 - county of, no specific power to control erection of, 262
- Public Health Act, 1925, s. 27, local authorities under, 261
 - metropolis, does not apply to, 261
 - provisions of, 260, 261
 - administration of, 261
- rights of property owners to be observed, 261
 - tramway, railway, dock, harbour and electricity companies, as to, 260

BRIDLEWAY. *See* title ROADS CLASSIFICATION.

BRINE PUMPING, 262—265

- Brine Pumping (Compensation for Subsidence) Act, 1891, object of, 262
scheme of, 262, 263
- compensation board, 263
 - contributions towards building costs by, 264
 - establishment of, 263
 - members of, 263
 - appointment of, 263
 - disqualification for, 263
 - purchase of land by, 264
 - regulations as to claims for, 264
- claims for, exceeding £1000, rights of brine pumpers to be heard, [264]
 - neglect or default of claimant, 264
 - onus of proof, 264
 - regulations as to form of, hearing, etc., 264
 - title of claimant, 264
 - appeal on questions of, 264
- districts, 262, 263
 - memorial to Minister of Health as to formation of, 263
 - provisional order for, 263
- funds, formation of, 263
 - rate for, 263
 - on brine pumpers, 265
- grounds for, 264
- injury or damage to houses provided under housing scheme, for, [263]
 - who may not receive, 263, 264
- subsidence, date of happening, 264

BROTHELS. *See* title DISORDERLY HOUSES.

BUDGETARY CONTROL, 265—281

- budget, capital, 278—281
 - capital expenditure, necessity of budgeting for, 278
 - Ministry of Health report on, 278, 279
 - regulations for the control of, 280
 - estimates on capital account, 280
 - statements as to loan charges, 279, 280
- budget, revenue, 275—278
 - estimates, supplementary, 277, 278
 - what included in, 276
 - report of finance committee, 277
 - skeleton estimates to be prepared, 275
- budgeting, practice of, 267—269
 - budget, period of, 269
 - continuous review of activities, necessity for, 271
 - county council, levy of rates by, 268
 - submission of estimate of income and expenditure to, 267
 - councils, provisions of Local Government Act, 1933, as to, 267—269
 - estimates, as a measure of control, 270
 - rates and precepts, 267, 268
 - Rating and Valuation Act, 1925, s. 12, provisions of, 267
 - duties of local authorities under, 267
 - spending committees, control over, 269
 - Haldane committee, report of, 270
- capital expenditure, regulations for the control of, 280
- chief financial officer, duties of, 275, 276
 - preparation of estimates by, 275, 276
- complete, necessary constituents of, 271
- estimates on capital account, 280
 - skeleton, preparation of, 275
 - supplementary, 277, 278
- expenditure, general observations on, 265—267
 - increase of, reasons for, 266
 - need for control of, 265

BUDGETARY CONTROL—*continued.*

- finance committees, appointment of, 268, 269
- chief financial officer, report by, 269
- implications of, 269—275
- income and expenditure, budget as a forecast of, 270
 - estimates of, 268
- loan charges, statements as to, 279, 280
- local authority, definition of, 267
- rate, rationing, 272—274
 - disadvantages attaching to, 274
- rates, stabilisation of, 271, 272
 - difficulties of complete, 272
 - essentials for, 272
- rationalisation schemes, 274, 275
 - application of, examples of, 274, 275
 - meaning of, 274

BUILDING, 281—289

- appearance or design of, control over, 286
 - relaxation of bye-laws for the purposes of, 286
 - town and country planning schemes, under, 286
- back-to-back houses, 286, 287
 - local authorities, powers of, 286, 287
 - prohibition of, 286, 287
 - what are, 287
- basements below ground, 285
- buildings, classification of, 285
 - "domestic," 285
 - "public," 285
 - "warehouse," 285
- bye-laws, 282—284
 - air space, as to, 282
 - enforcement of, 284
 - exemption from, 284
 - buildings of county council, 284
 - Government department, 284
 - local authorities, 284
 - railway companies, 284
 - general application of, 282, 283
 - height of buildings, as to, 285
 - new building, with reference to, 282, 283
 - Public Health Act, 1875, s. 157, provisions of, 282
 - requirements included in, 283
 - stability, prevention of fire, health purposes, 282
- dangerous structures, 287
 - fencing, 287
 - justices order, 287
 - notices as to, 287
- factories, 285
 - escape from fire, provision of means for, 285
 - Factory and Workshop Act, 1901, provisions of, 285
- height of, 284, 285
- London, in, 285. *See* title LONDON BUILDING ACT.
- line, 286
- operations, regulation of, 281
- safety of the public, 287—289
 - building operations, precautions during, 288
 - erection of hoardings, etc., 288
 - platforms and stands, 289
 - Public Health Act Amendment Act, 1890, s. 37, provisions of, 289
 - public buildings, as to, 287, 288
 - churches or chapels, 288
 - means of ingress and egress, 288
 - "place of public resort," 288

INDEX

BUILDING—*continued.*

- sanitary conveniences, 289
 - factories, in, 289
 - generally, 289
- temporary, control of, 281, 282
 - caravan, 281

BUILDING AND IMPROVEMENT LINES, 290—297

- building lines, 291—294
 - erection or alteration of buildings, on, 292, 293
 - Public Health (Buildings in Streets) Act, 1888, s. 3, provisions of, 292
 - application of, 292
 - buildings used for railway purposes, 293
 - consent of authority under, 292
 - "house . . . on either side thereof," meaning of, 293
 - penalty on breach of, 293
 - proceedings under, dismissal of, 293
 - subsequent, 293
 - refusal of plans by consent, 293
 - London, duty of superintending architect to define, 297
 - appeal against decision of, 297
 - power to prescribe, 290
 - reconstruction of buildings on, 291
 - building projecting beyond, 292
 - right of local authority to prescribe, 291
 - setting back or forward, 291
 - compensation on, 291
 - arbitration as to, 291
 - Roads Improvement Act, 1925, under, 294, 295
 - corners, obstruction of view at, restriction of, 294
 - compensation for, 294
 - prescription of, 294
 - compensation for, 295
 - plans and notices of, 295
 - registration as land charge of, 295
 - distinction between, 290
 - improvement lines, 295—297
 - compulsory purchase of land for the purposes of, 297
 - Public Health Act, 1925, s. 33, under, 295, 296
 - prescription of, 295, 296
 - appeal against, 296
 - compensation for, 296
 - registration of, 296
 - terms of, 296
 - vaults and cellars, 293, 294
 - consent of local authority to construction of, 294

BUILDING BYE-LAWS, 298—307

- alteration of buildings in contravention of, 306
 - building other than dwelling-house, use of for purposes of habitation, 306
- application for confirmation of, 302
- as to, circulation of air and ventilation, 299
 - fire, prevention of, 299
 - new buildings, structure, etc. of, 299
 - streets construction, etc. of, 299
 - paving of yards and open spaces, 299
 - sanitary arrangements generally, 299
- buildings, chimneys, etc., height of, 300
- cinematograph buildings, special safety provisions for, 301
- conversion of buildings, 306, 307
 - erection of new building by, 307
- general purposes of, 298, 299
- hoards, etc., erection of during building operations, 307
 - lighting of, 307
 - requirements of local authority as to, 307
- impeding execution of scheme under Town and Country Planning Act, 1932... [302]
- new buildings, classification of, 303
 - domestic, 303

BUILDING BYE-LAWS—*continued.*

new buildings, classification of—*continued.*

public, 303

warehouse, 303

working-classes, dwellings for, 303

erection of, operations treated as, 300

what are, 303, 304

within the meaning of, 304

street, enforcement of conditions on approval of, 306

streets and buildings, model bye-laws as to, 302, 303

districts devised for, 302, 303

intermediate, 302, 303

rural, 302, 303

urban, 302, 303

plans, approval of, 300

period for, 305

retention of, by council, 305

submission of, 305

powers of local authorities to make, 298, 299

Public Health Act, 1875, s. 157, provisions of, 299

extension of under Public Health Act Amendment Act, 1890...299

smoke, abatement of, 301

suspension of, 302

powers of Minister of Health as to, 302

work, commencement of, 306

contrary to, expenses of removal of, 300

working-classes, housing of, back-to-back houses, as to, 302

Housing Act, 1930, provisions of, 301

work required by, execution of by owner, 301

local authority,

[301

power of entry for execution of,

[301

appeal against, 301

workshop or factory, means of escape from fire, provision of, 301

BUILDINGS, SAFETY PROVISIONS OF. *See* title SAFETY PROVISIONS OF
[BUILDINGS AND STANDS.

BUILDINGS, SANITARY CONVENIENCES, ETC. *See* title SANITARY CON-
[VENIENCES.

BURGESS ROLL. *See* title REGISTRATION OF ELECTORS.

BURIAL AND CREMATION, 308—313

“Christian,” 309

right of, meaning of, 310

churches, in, 310

faculty for, 310

consecrated ground in, 309

coroner's order, on, 309

cremation, 313

“decent,” 308, 310

disinterment, lawful authority for, 310

without, 310

disposal of remains, directions in will as to, 310, 311

Anatomy Act, 1832, provisions of, 311

cremation, in case of, 310, 311

grounds, management and control of, 311

law, development of the policy of, in England, 311, 312

lawful disposition of the dead, 308, 309

cremation, 30, 313

manner of, 310

miscellaneous rights of, 312, 313

drowned persons, 312

felo de se, 312

murderers, 312

person dying of infectious disease, 312

seamen, 312

stillborn children, 313

place of, 310

INDEX

BURIAL AND CREMATION—*continued*.

- poor persons, of, 309
 - Poor Law Act, 1930, provisions of, 309
- records of, 311
- registrar's certificate for, 309
- rights and duties of private persons as to, 309—311
 - duty of executor, 309
 - householder, 309
 - husband, 309
 - parent, 309
 - rights of parishioners and inhabitants of parish, 309
 - burial in parish churchyard, 309
 - performance of service at, 309
- service, duty of minister to perform, 309
 - performance of, layman by, 309
 - over excommunicate, 309
 - felo de se*, 309
 - unbaptised person, 309
- unconsecrated ground, in, 309

BURIAL AUTHORITIES, 314—318

- "burial authority," definition of, 314
- Burial Act, 1900, s. 11, provisions of, 314
- burial board, functions of, 316
 - investment of borough council with, 316
 - district council with, 316
 - joint committee, exercise by, 317
 - parish council may adopt, 317
 - transfer of powers and duties of, 315
- cemetery authorities, provision of cemetery by local authority under Public Health (Interments) Act, 1879...317
- functions of, 315
 - burial grounds, consecration of, to arrange for, 315
 - control and management of, 315
 - financial matters of, 315
 - provision of, 315
 - interments, to provide table of fees for, 315
 - registration of burials, graves, etc., 315
- London, in, local authorities, as, 317, 318
 - City of, common council as, 318
 - metropolitan boroughs, as to, 318
- powers and duties of, authorities exercising, 316
- vesting, transfer of civil powers of, 315

BURIALS AND BURIAL GROUNDS, 319—351

- ashes, after cremation, burial of, 348, 349
- Burial Acts, adoption of, 320—323
 - rural parishes by, 322, 323
 - parish council, where, 323
 - procedure for, 323
- burial board, 320
 - abolition of, 322
 - transfer of powers, duties, etc. of, 322
 - election of, 320
 - members of, 322
 - election of, 322
 - qualification for, 322
 - vacancies on, 322
- faculty of Consistory Court for, 333
 - grant of, 333
- ground, special resolution to provide, 320
 - adoption of, 320
 - areas for which, 320
 - boroughs and urban districts, by, 321
 - Public Health (Interments) Act, 1879, provision [of cemetery under, 321
 - consent of Minister of Health, necessity for, 321
- meeting for, 320
- notice of, 321

INDEX

BURIALS AND BURIAL GROUNDS—*continued.*

- burial grounds, acquisition of, 323—332
 - burial board, borough council acting as, 327, 328
 - parish council acting as, 329, 330
 - urban district council acting as, 329
 - extension of churchyard, 324
 - joint burial committees, by, 331, 332
 - private burial grounds, 323, 324
 - under the Burial Acts, 324—332
 - elective burial board in boroughs and urban districts, [325—327]
 - alienation of lands, 325—326
 - consecration, 326, 327
 - expenditure, 325
 - finance, 327
 - rateability, 326
 - restriction on use of land for burial by Burial Act, [1906...326]
- administration of, 336—339
 - books and forms to be kept, 339
 - burial service, arrangements for, 340
 - fees for performance of, 340, 341
 - burials, register of, 338
 - check of, 338, 339
 - entries in, 338, 339
 - clerk, appointment and duties of, 336
 - fees generally, 340—342
 - grave plan, 336, 337
 - graves, common, 337, 338
 - register of, 337
 - regulations for, 339, 340
- Government control and supervision of, 336
 - inquiries as to, 336
 - sanitary conditions of, 336
 - management of, 332—340
 - parish churchyard, 332—334
 - new, selection of site for, 332
 - regulations for, 339, 340
 - under the Burial Acts, 336
 - regulations affecting, 335, 336
 - penalty on breach of, 335
- in parish churchyard, exclusive right of, 333
 - registration of, 334
 - strangers, of, 333
- rights of, purchase and transfer of, 349—351
 - conveyance, model deed of, 350, 351
- service, 340—342
 - fees for performance of, 340, 341
 - without reference to coroner, 342—344
 - burial, 343
 - medical certificate, 342
 - registrar's certificate, 343, 344
 - registration, 342, 343
- burials, without rites of Church of England, notification of, 334, 335
 - register of, 334, 338, 339
 - destruction of, or making false entry in, 335
 - entries in, 338, 339
 - search of, 334
 - fee for, 334
 - registration of, 334
 - cemetery, superintendent of, appointment of, 336
 - certificates for disposal, after registry, 346
 - before registry, 346
 - coroner, burial after reference to, 344—347
 - burials without reference to, 342—344
 - cases to be reported to, 344, 345
 - orders for burial by, record to be kept of, 347
 - to whom given, 346

BURIALS AND BURIAL GROUNDS—*continued.*

- cremation, burial of ashes after, 348, 349
- disposal, certificate for, 346, 347
 - record to be kept of, 347
 - notification of, 346, 347
- graves, common, 337, 338
 - register of, 337
- inquest, registration after, 345
- London, authorities for, 352
- monument, erection of, 333, 351
 - faculty for, 333
 - property in, 334
- parish churchyard, 332
 - brawling in, 334
 - burial in, manner of, 333
 - registration of, 334
 - right of, 333
 - incumbent, status of, 334
- poor, burial of, 347, 348
 - expenses of, 348
- Poor Law Act, 1930, provisions of, 347, 348
- registrar, cases to be reported to coroner by, 344, 345
 - certificates of, 345—347
 - notification of disposal of body to, 346, 347
- registration of burial after inquest, 345
- sexton, office of, 334
- still births and deaths, registration of, 344, 345

BURNHAM SCALES. *See* title TEACHERS.

BUTTER, MARGARINE AND CHEESE, 353—358

- butter, composition of, 354
 - containing more than 16 per cent. of water, 354
 - definition of, 354
 - factories, inspection of, 355
 - registration of, 355
 - notification to Minister of Agriculture and Fisheries of, 355
 - milk-blended, 354, 355
 - preservatives, 356
 - salt and colouring matters, 354
- cheese and margarine-cheese, 358
 - factories for, registration of, 358
 - fat contents of, 358
- London, law applicable to, 358
- margarine, composition of, 355
 - mixture of butter and, 355
 - description of, 357, 358
 - "exposed for sale," 356, 357
 - factories, 356
 - inspection of, 356
 - records of consignment from, 356
 - registration of, 356
 - labelling and marking, 356—358
 - wrapper of, 357
 - "wrapper," meaning of, 357, 358
 - "parcel" of, 356
 - sale of when butter demanded, proceedings on, 357
- sale of, Food and Drugs (Adulteration) Act, 1928, provisions of, 353
- sampling officers, special powers of, 354
 - taking of samples, 354

BUTTER-MILK. *See* title BUTTER, MARGARINE AND CHEESE.

BYE-LAWS, 359—378

- abrogation or waiver of, 370, 371
 - local authority by, 370, 371
 - repeal of enabling Act, 370
- capable of two constructions, 369

INDEX

BYE-LAWS—*continued.*

- certified copy as evidence of, 373
- characteristics of, 365—370
 - ambiguous, must not be, 369
 - certainty of terms, 369
 - certain and definite language, necessity for, 369
 - intra vires* of the authority by whom made, 367, 368
- reasonableness, examples of, 365, 366
 - involving partial restraint, 365
 - lawful preferential treatment, as to, 366
 - partial and unequal in operation, where, 365
 - probable inconvenience caused by, 366, 367
 - stringency of, 366
- repugnant to general law, must not be, 368, 369
 - creating a new offence, where, 368
- common seal of council, necessity for, 362
 - parish council, in case of 362
- confirmation of, 363
 - date of operation after, 363
 - refusal to confirm, 363
- construction of, 371, 372
 - conflicting with Act under which made, where, 372
 - Interpretation Act, 1889, s. 31, provisions of, 372
 - made by local authority, 372
 - rules for, 371
 - where all conditions precedent to validity fulfilled, 372
- creating a new offence, 368
- Crown not bound by, 361
- definition of, 359
- distinguished from statutes, 360
- draft, public inspection of, 360
- enforcement of, 375
 - offenders, removal of, 375
 - registration or licences, cancellation of, 375
 - work, pulling down offending, 375
- evidence of, 373
 - certified copy of, 373
- forgery of, 375
- good rule and government for, construction of, 370
- interpretation of, made by corporation, when, 365
 - public representative bodies, 365
- introductory observations, 359—361
- London, powers of county council to make, 375
 - summary, 376—378
 - metropolitan borough councils to make, 376
 - summary, 378
- operation, date of, 363
- parish council, made by, 362
- penalties for breach of, 373—375
 - injunction, 374, 375
 - recovery of, 374
- powers of local authorities to make, 361
 - good rule and government, for, 361
 - construction of, 370
 - under Advertisement Regulation Acts, 362
 - Education Act, 1921...362
 - Petroleum (Consolidation) Act, 1928...362
- publication and confirmation of, 362—363
 - made but not confirmed before June, 1934...363
 - procedure under Local Government Act, 1933...362
 - Public Health (Confirmation of Bye-laws) Act, 1884, s. 3,
 - [provisions of, 364]
 - of confirmed, 363, 364
 - councils to interchange copies of, 363, 364
 - inspection of, 363
 - supply of copies of, 363
- terms of, amendment of, 360
 - definite and ascertainable, 360

INDEX

BYE-LAWS—*continued*.

testing validity of, 367
void in part, 370

BY-PASS ROADS, 379—383

acquisition of land for, 381
common land, 381
compulsory, 381
Development Commissioners, order of, 381
provisional, 381
exchange, by, 381
Development and Road Improvement Funds Act, 1909, grants under, 379
highway authorities roads, on, 382
cost of, 382
road in more than one area, as to, 382
“county road,” order declaring, 382
introductory observations on, 378, 380
Ministry of Transport Roads, on, 380
approval of Minister, 380
Treasury, 380
construction of, highway authorities, notice to, 380
objections by, 380
Unemployment (Relief Works)
[Act, 1920, s. 4, provisions of, 380]
maintenance and repair of, 380
protection of, 382, 383
advertisements, regulation of, 382
private Acts, under, 383
schemes for, 382
purpose of, 380
term, application of, 380

CABLES. *See* titles ELECTRICITY SUPPLY ; HARBOURS.

CABMEN'S SHELTERS, 383—384

provision of, London, in, application for, 384
commissioner of police, reference to, 384
regulations by, 384
powers of urban authorities as to, 383
Public Health Act Amendment Act, 1890, s. 40, under, 383
use of, bye-laws affecting, 384
regulations as to terms and conditions of, 383

CABS. *See* titles HACKNEY CARRIAGES ; LONDON ROADS AND TRAFFIC.

CALCIUM CARBIDE. *See* title CARBIDE OF CALCIUM.

CAMBRIDGE, BOROUGH OF, 385—386

assessment committee, representation of university on, 386
borough council of, 385, 386
representation of university in, 385
mayor of, has no precedence over vice-chancellor of university, 386
municipal government of, conflicting claims of university of, 385
police force, control of, 385
public entertainments, revocation of licences for, 386
University of Cambridge, grant of licences for the sale of wine by, 386
powers of proctors, 386
representation in municipal government of, 385, 386

CAMPS. *See* titles EDUCATION SPECIAL SERVICES ; TENTS, SHEDS AND VANS.

CANAL BOATS, 387—391

annual report by Board of Education, 391
Minister of Health, 391
children resident in, educational provisions for, 390
school certificates for, 390
definitions, “canal boat,” 387
“master,” 387
“narrow” boat, 389
“owner,” 387
“wide” boat, 389

CANAL BOATS—*continued.*

- " fly " boat, meaning of, 389
- inspection of power of entry for, 390
 - appointment of, 391
- London, application of Canal Boat Acts to, 391
- marking, 389
- occupation of as dwellings, Acts affecting, 387
 - penalties for contravention of, 390
- petroleum, loading, conveying, etc., special regulations as to, 391
- registration of, 388, 389
 - authorities for, 388
 - certificates of, 388
 - fees on, 388
 - inspection of boat, 388
 - report on, 388
 - Regulations of 1878...388, 389
 - structural alteration of boat, 388
- registration and sanitary authorities, duties of, 390
 - expenses of, 390, 391
- sanitary conditions, as to, 389
 - infectious and other serious diseases, 389, 390
 - inspection of, 390

CANDIDATE. *See* title ELECTIONS.

CANNED FOOD. *See* title ADULTERATION OF FOOD.

CAPITAL ASSETS. *See* title BORROWING.

CAPITAL EXPENDITURE. *See* titles BOROUGH ACCOUNTS; COUNTY ACCOUNTS; RURAL DISTRICT COUNCIL ACCOUNTS; URBAN DISTRICT COUNCIL ACCOUNTS.

CANALS, 392—399

- advances for the construction, improvement or maintenance of, 392
- bridges and approaches, 393, 394
 - over, adoption and maintenance of by local authority, 394
 - county councils, powers of, 394
 - liability to repair, 394
- buildings and sky signs, 396
- bye-laws affecting, approval of Minister of Transport for, 393
- canal, what included in term, 392
 - under Bridges Act, 1929...392
 - Regulation of Railways Act, 1873...392
- canal companies, savings for, 397—399
 - under Bridges Act, 1929...398
 - Electricity Acts, 398
 - Public Health Act, 1925...398
 - Roads Improvement Act, 1925...397, 398
 - Town and Country Planning Act, 1932...398
- charges, traffic, etc., as to, 392
- construction of works affecting by local authorities, 396
 - consent of canal company to, 396
- derelict, compensation for damage by water from, 393
 - order of Minister of Transport as to, 393
- disused, application by local authorities as to, 393
- injury by local authority to, remedy for, 397
- interference with bridge's crossing, 396
 - navigation of, 396
 - water supply to, 396
 - wharfs, quays, etc., of company, 396
 - works, etc., of company, notice of, 396
 - consent of company to, 396
 - refusal of, arbitration on, 396, 397
- London, City of, common council, powers of, 399
 - county of, protection of dangerous places on, 399
 - Canals Protection (London) Act, 1898, provisions of, 399
 - appeal against requisition under, 399
 - metropolitan borough councils, powers of, 399

INDEX

CANALS—*continued.*

- pollution of, 395
 - filthy water distinguished from sewage, 395
 - purity and quality of water, deterioration of, 395
- Private Street Works Act, 1892, s. 22, provisions of, 397
- liability of canal company under, 397
- rating of, 392
- sewers, and pollution, 395
 - local authorities, powers of, as to, 395
 - drains, etc., laid by local authority, powers of canal company to take up [or divert, 395
- sky signs, device relating exclusively to business of canal company, as to, 396
- towing-paths, 394, 395
 - interference by local authorities with, 395
 - public footpath as, 394
 - right of way over, 394
 - sewers under, 395
 - wires along, 395
- Town and Country Planning Act, 1932, canal companies as statutory under-takers under, 392, 393
 - "statutory undertakers," definition of, 392

CANALS, RATING OF. *See* titles RAILWAYS, RATING OF; RATING OF SPECIAL [PROPERTIES.

CANCER, 400—406

- action by local authority, reasons for, 401
- Central Midwives Board and, 403
- circulars and memoranda as to, 404—406
- county councils, recommendations to, 400, 401
- definition of, 400
- local health authorities, powers and duties of, 400
 - recommendations to, 400, 401
- London, statistics relating to, 406
- Medical Research Council, reports of, 403
- notification of, cases in which, 401, 402
- occupational, 402
- reports dealing with, 403, 404
- treatment of, official publications on, 402

CAPITAL EXPENDITURE OUT OF INCOME, 407—410

- advantages, of, 408, 409
- borrowing by local authorities, authorisation of, 407, 408
 - Government sanction for, 407, 409
- electricity undertakings, 409, 410
 - Electricity (Supply) Act, 1926, provisions of, 409, 410
- expenditure of a recurring character, where, 408
- meaning of, 408
- observations on, concluding, 410
 - introductory, 407, 408
- sanction for, 409
 - education, for the purposes of, 409
 - police services, in case of, 409
- trading undertakings, as to, 409

CARAVANS. *See* title TENTS, SHEDS AND VANS.

CARBIDE OF CALCIUM, 411—412

- lighthouses, in, 412
- London, application of order in council to, 412
- Petroleum (Consolidation) Act, 1928, application of, 411
 - order in council under, provisions of, 411
- quantity kept without licence, 411, 412
 - conditions under which, 411, 412
 - notice of, 411, 412
- sewers, emptying into, penalties for, 412

CARE AND PROTECTION OF CHILDREN AND YOUNG PERSONS, [412—415

- approved school, sending child to, 414
- chief education officer, proceedings by, 414

CARE AND PROTECTION OF CHILDREN AND YOUNG PERSONS—*contd.*

- children against whom certain offences have been committed, 413
 - having no parent or guardian, 413
 - unfit parent or guardian, 413
- Children and Young Persons Act, 1933, s. 61, provisions of, 412, 413
- courts, powers of, 414, 415
 - juvenile, 414
 - supervision, order of, 414
- "fit person," committal to the care of, 414
 - local authority as, 415
- "in need of care and protection," meaning of, 412, 413
 - classes of, 412, 413
- local authority, 413, 414
 - appearance by clerk or authorised officer, 414
 - delegation of powers of, 414
 - duty of, 413, 414
 - investigations by, 414
 - notification of proceedings to, 414
- London, application of Act of 1933 to, 415
- Minister of Pensions, committal of child to the care of, 415
 - qualifications of child, 415
- moral danger, evidence of, 413
 - begging, destitute, wandering, etc., 412
- supervision order, as to, 414

CASE-PAPER SYSTEM, 416—423

- advantages of, 416, 417
- case-papers, availability of, 420, 421
 - compilation of, 417
 - custody of, 420, 421
 - documents of, 417
 - information to be supplied, 417
- forms in, 417—419
 - particulars on later investigations, 419
 - record of circumstances, 418
 - decisions of the committee, 417
 - settlement, 419
 - filing and records of, 421
 - statement as to liable relatives, 419
- nature of, 417
- central organisation and control, necessity for, 420, 421
- London, registration of assistance in, 423
- poor law relief, records of recipients of, 417
- preliminary observations, 416, 417
- public assistance, central index of, 419
 - relation to public health and other departments, 421—423
 - persons maintained in institutions, recovery of expenses from, 421
- requirements of Local Government Act, 1929, s. 4...419
- suggested records to be taken—
 - assistance, treatment, grants, etc., under—
 - education, 422
 - maternity and child welfare scheme, 422
 - mental defectives, 422
 - necessitous and unemployable blind, 422
 - orthopædic scheme, 422
 - school medical service, 422
 - treatment of tuberculosis, 421
- relieving officer, investigations by, 417

CASE STATED, 423—435

- London, decision of justices in assessment sessions, questioning by, 435
 - general law applicable to, 435
- quarter sessions, by, 431—435
 - at the discretion of the justices, 432—434
 - appeal, case deemed to be, 434, 435
 - case, contents of, and signature to, 434
 - time for stating, 434
 - cases improperly or insufficiently stated, 434
 - in which, 433, 434

CASE STATED—*continued.*

quarter sessions, by—*continued.*

at the discretion of the justices—*continued.*

costs, 435

indictments, as to, 433

judgment or order of High Court, 434

mandamus, 433

obtaining the opinion of the High Court, 432, 433

procedure and hearing, 434, 435

by consent of parties, 431, 432

draft case, contents of, 432

procedure, advantages of, 432

right to begin, 432

special case, order for submission of to High Court, 431, 432

summary jurisdiction, by court of, 423—431

appeal, right of, 423, 424

to quarter sessions, abandonment of right of, 425

appellant, admission to bail of, 426

recognisance for, 426

enforcement of, 426, 427

application by Attorney-General, 425

for, 425, 426

time for, 425, 426

to High Court, grounds for, 425

"court of summary jurisdiction," meaning of, 424

examples, 424

fees of clerk to justices, 426

form of, 429

amendment of, 429

Crown office rules as to, 429

settling, 429

signature of justices to, 429

hearing and determination, 430, 431

costs, 431

counsel in, 430

court of, 430

"criminal cause or matter," 431

appeal, leave to, 431

joint conviction, as to, 430

justices a party to, 430

mandamus, 430

powers of court, 430, 431

remission back, 430

justices having no jurisdiction, by, 425

meaning of, 424

notice of appeal to other party, 427, 428

service of, 428, 429

recognisances, 426

amount of, 426

sureties, 426

terms of, 426

refusal of justices to state, 425

certificate of, 425

grounds for, 425

Summary Jurisdiction (Appeals) Act, 1933, effect of, 426

time for stating, 427

transmission of case to Crown office, 427, 428

delay in, 427

time for, 427

CASTING VOTE. *See* title MEETINGS.

CASUAL VACANCY, 436—439

casual vacancies, term of office of persons filling, 438

causes of, 436

failure to attend meetings, by, 437

attendance at committees, etc., effect of, 437

exceptions to rule, 437

date of, 437

INDEX

CASUAL VACANCY—*continued.*

- declaration of, 437
 - notification of, 437
 - when not required, Local Government Act, 1933, s. 64, provisions of, 437
- filling of, 437
 - elections for the purpose of, 437
 - date of, 438
 - "ordinary day of retirement from the office in which the vacancy [occurs," meaning of, 438
 - in case of chairman of county council, 437
 - district or parish council, 437
 - parish meeting, 438
 - councillors, 438
 - county alderman, 437
 - mayor or alderman of borough, 437
 - parish councillors, 438
- London, differences between filling casual vacancies in case of councillor and in [case of mayor or alderman, 439
 - London Government Act, 1899, provisions of, 438
 - s. 2 (4), mayor and aldermen, as to, [438
 - (5), councillors, as to, 439
- mayor, absence from office of, 436, 437

CASUALS, 440—448

- admission to casual wards of, 443
 - refusal of, 443
 - searching, on, 444
- aged and infirm, transfer to institutions of, 446
- agencies for the training of, 447
- bathing and disinfection, 443
- "casual poor person," definition of, 440
- casual poor, relief of, report of departmental committee on, 441
 - wards, admission of casuals to, 443
 - notification of refusal of, 443
 - searching, on, 444
 - altering, enlarging, etc., expenses of, 441
 - chaplain to, 442
 - religious administration by, 445
 - dietary, 445
 - duty to provide, 441
 - public assistance authority, by, 441
 - female, 441
 - government and control of, 442
 - inspection of, 442
 - management of, 442, 443
 - committee, 442
 - matron of, 442
 - meaning of, 441
 - medical officer for, 442
 - medical examination and attention, by, 445
 - fees for, 445
 - Ministry of Health circulars as to, 441
 - officers of, 442
 - provision of, 441
 - publication of notices in, 448
 - records of admissions and discharges to be kept, 443
 - reports of master and medical officer of, 442
 - child, adoption of, 446
 - powers of public assistance committee as to, 446
 - prevention from receiving education, Children and Young Persons Act, [1933, s. 10, provisions of, 446
 - exceptions to, 446
 - county and county borough councils, responsibility of, 440, 441. *See* title [JOINT VAGRANCY COMMITTEES.
 - dietary, 445
 - children under twelve, for, 445

INDEX

CASUALS—*continued.*

- discharge of, 443, 444
 - further detention, 444
 - suffering from disease, when, 444
 - general rules for, 443, 444
 - "vacant ticket," 443, 444
 - work prior to, 444
- "idle and disorderly person," whom deemed to be, 447
- London, casual wards in, 448
 - Metropolitan Homeless Poor Committee, activities of, 448
- medical examination and attention for, 445
- offences by, 447
 - detention for, 447
 - labour colony, as to, 447
- religious administration for, 445
- remedial measures, 447
 - voluntary agencies for the training of, 447
- searching, regulations as to, 444
 - right of, 444
- statutes relating to, 440
- tasks of work for, 445
 - power of Minister of Health to make regulations as to, 445
- transfer to institutions of, recommendation by medical officer, 446
- unemployment insurance benefit, disqualification for, 447
- "vagrant," 440

CATCHMENT BOARDS, 449—460

- accretions of land, acquisition of, 457
 - compensation for, 457
 - vesting in Commissioners of Crown Lands of, 457
- bills and provisional orders, powers as to, 458
- catchment area, abolition of commissioners of sewers within, 454
 - addition or exclusion of, 450
 - boundaries of, 449
 - map of, 451
 - approval of, 451
 - effect of, 451
 - notice of preparation of, 451
 - variation of, 451
- board, a body corporate, 450
 - casual vacancies on, 452
 - chairman, payment of, 453
 - constitution of, 450
 - order for, 450
 - application to quash, 450, 451
 - notice of, 450
 - validity of, 450
 - meaning of, 449
 - members of, appointment of, 452
 - disclosure of interest of, 453
 - expenses of, 453
 - period of office, 452
 - vacation of office by, 452
 - absence from meeting, 452
 - bankruptcy, 452
 - notice in writing, 452
 - membership, disqualification for, 452
 - minutes of, as evidence, 453
- Crown and tidal lands, application of Act to, 458
- drainage board, transfer of functions of, 456
 - order for, 456
- "drainage boards," are, 455
 - internal, disputes with, settlement, 455
 - exercise of powers of, on default by, 455
 - by county or borough council, 456
 - inspection of documents on, 456
 - notice of intention to, 456
 - general supervision over, 455, 456

INDEX

CATCHMENT BOARDS—*continued*.

- exercise of powers of subject to provisions of local Acts, 458
- expenses of, how raised, 458—460
 - borrowing powers of, 460
 - contributions by county and county borough councils, 458
 - aggregate amount of, 459
 - internal drainage boards, 459
 - assessment of, appeal against, 459
 - precepts for, 459
 - mandamus*, 459
 - grants from public funds, 459
- Land Drainage Act, 1930, lands affected by, 458
 - notices under, service of, 458
 - provisions of, 449
- London Conservators of River Thames, constitution of, 460
 - drainage boards for, 460
- Lee Conservancy Catchment Board, constitution of, 460
- main river, new bridges over, construction of, 455
 - obligations to repair, etc., commutation of, 456
 - effect of, 457
 - notice to person affected, 456
 - remedies of landowner, 457
 - powers in connection with, 454, 455
- powers and functions of, 453
 - drainage, as to, 453
- proceedings of, rules for the regulation of, 452
 - for appointment of chairman and vice-chairman, 453
 - constituting committees, 453
 - notice and place of meeting and quorum, 453
- schemes by, confirmation of, 454
 - copies to be sent to authorities affected by, 454
 - copy, inspection of, 454
 - notice of submission of, 454
 - preparation of, 453, 454
 - awards, for varying, 454
 - existing authorities, for transfer of powers of, 453
 - internal drainage boards, for reorganisation of, 454
 - procedure, as to, 454

CATTLE ON HIGHWAYS, 460—464

- borough or urban district, in streets of, 461, 462
 - "obstruction, annoyance or danger of residents or passengers," 462
- bulls, bye-laws affecting, 462
- "cattle," definition of, 460, 461
- common or waste ground, 461
- conditional permission, 462
- damage by, civil actions for, 462, 463.
- divine service, driving cattle during, 462
- for show, hire or sale, 462
 - exceptions to, 462
- impounded, feeding, 461
 - sale of, 461
- impounding, 461
- London, "cattle," definition of, 463, 464
 - statutes relating to, 463, 464
- lying about, 461
- pasturage, right of, 461
- pound, provision of, 461
- pound-breach, 461
- riding or driving furiously, 462
- statutory offences, 461, 462
- straying, 461
 - penalty and expenses, 461
- tethering, 461
- Town Police Clauses Act, 1847, ss. 21—29, application of, 462
- wilfully riding or leading, 461
- worrying, 462

INDEX

CELLAR DWELLINGS, 464—467

- ancient, requirements of Act as to, 464, 465
 - letting or occupying in contravention to, penalty for, 465
 - indictment, where, 465
- "cellar," what included in, 464
- closing order, 465
 - court of summary jurisdiction, powers of, 465
- London, underground rooms in, communication with owners of, 466
 - Housing Act, 1930, s. 19, undertakings by owners under, 467
 - Public Health (London) Act, 1891, s. 96, provisions of, 466
 - "underground room," what included in, 466
- modern, 464
- Public Health Act, 1875, provisions of, 464
- underground rooms used as sleeping places, 465, 466
 - Housing Acts, 1925 and 1930, provisions of, 466

CELLAR FLAPS. *See* title ROAD PROTECTION.

CELLULOID. *See* title CINEMATOGRAPHS.

CEMENT WORKS. *See* title ALKALI, ETC., WORKS.

CEMETERIES, 468—483

- acquisition of land for, 470, 471, 472
 - in advance of requirements, 471
 - Local Government Act, 1933, provisions of, 471
- purchase, by agreement, 471
 - compulsory, 471
 - notices, etc. of, 471, 472
- appropriation of land for, 472
 - conditional, 472
 - sale or letting of surplus, 472, 473
- bye-laws and regulations for, 476, 477
 - model, 476, 477
- Cemeteries Clauses Act, 1847, as applying to, 479
 - acquisition of land, 479
 - chapels, erection of, 479
 - chaplain, burial service by, 479
 - clerk, gravediggers, etc., 480, 481
 - consecration, 480
 - enclosure of cemetery, 479
 - exclusive rights of burials, monuments, etc., 481
 - registration of, 481
 - introductory, 479
 - payments to incumbents and parish clerks, 481
 - registration of burials, 482
 - removal of bodies, 480
 - roads, drainage, etc., 479
 - right of burial, form of assignment of, 483
 - grant of, 482
- chapels, burials in proximity to, 473
 - erection of, 470, 471
 - denominational, 471
 - powers of council to erect, 473
 - denominational, 473
- chaplains and other officers, appointment of, 478
- denominational, 469
- disused, building upon, 473
- fees and charges, 477, 478
 - scale of, 477, 478
- in addition to burial ground maintained under Burial Acts, 470
- income and expenditure of, yearly return to clerk of peace, 474, 475
- laid out under local Act incorporating Cemeteries Clauses Act, 1847, provision
 - [of chapel for, 473]
- loans for, application for sanction, 474
 - necessary particulars and documents to be supplied, 474
 - terms for repayment of, 474
- London, Public Health (Interments) Act, 1879, does not apply to, 483

CEMETERIES—*continued.*

- maintenance of, 475, 476
- duties of council as to, 475, 476
 - buildings and fences, repair of, 475
 - drainage, 475
 - compensation for damage, 475
- meaning of term, 468, 469
- ministers, fees to, 478
 - liability of council for, 478
- monumental inscriptions, removal of, 478
- protection of, 478
- provision and maintenance of, expenses of, 470
 - of, borough or district council by, 469
 - gifts of land or money for, 469
 - site of, 469
 - borrowing for purposes of, 470
 - control of Ministry of Health as to, 474, 475
- proximity to dwelling-houses, 471
- Public Health (Interments) Act, 1879, under, 469—479
 - advantages of, 475
 - application of Cemeteries Clauses Act, 1847...470, 471
 - London, does not apply to, 469
 - power to provide, 469, 470
- rating of, 479
- sanitary requirements of Local Government Memorandum as to, 475, 476
- serving portion of borough or urban district only, 470

CEMETERIES, RATING OF. *See* title RATING OF SPECIAL PROPERTIES.

CEMETERY SUPERINTENDENT, 483—485

- appointment of, 483
 - appointing authority, 483, 484
- office, tenure of, 484
 - reasonable notice, subject to, 484
- rights and duties of, 484, 485
 - general observations on, 484, 485

CENSORSHIP OF FILMS. *See* title CINEMATOGRAPH.

CENSUS, 486—489

- changes in figures of, subjects affected by, 487
- county volume, contents of, 488
- industries, volumes dealing with, 488
- juveniles, classification of, 488
- London, in reference to, 489
- particulars required for the purposes of, 487
- preliminary note, 486
- references in future enactments to, construction of, 489
- special local, 489
- statistics, abstracts of, 488
 - Registrar-General may supply, 488
- interim, 488
 - Registrar General, returns by, 489
 - births and deaths, 489
 - notifiable diseases, 489
- special, 488
- use of, 486, 487

CENSUS ACT, 1920. *See* LOCAL CENSUS.

